Supreme Court, U.S.
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No. 93- 1148

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ALEXANDER LOCE,

Petitioner,

- against -

THE STATE OF NEW JERSEY,

Respondent.

TINA KRAIL, LORI CHADWICK,
DEBORAH SMOLDORE AND JEANNIE HENDERSON

Petitioners

- against -

THE STATE OF NEW JERSEY

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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NOT FOR THE PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-934-91T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ALEXANDER V. LOCE,

Defendant-Appellant,

and

TINA KRAIL, LORI CHADWICK, JAMES MCWILLIAMS, CHRIS MOSCHINSKI, DEBORAH SMALDORE, WILLIAM HARRISON, JOHN ADAMS, LISA ADAMS, CHARLES MATSON, DANIEL LICKTEIG, JEANNIE HENDERSON, TYRONE MALONE, NEAL WEBSTER and RALPH TRAPHAGEN,

Defendants.

A-1233-91T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TINA KRAIL, LORI CHADWICK, JAMES

MCWILLIAMS, CHRIS MOSCHINSKI,
DEBORAH SMALDORE, WILLIAM HARRISON,
JOHN ADAMS and LISA ADAMS,

Defendant-Appellants,

and

ALEXANDER V. LOCE, CHARLES MATSON,
DANIEL LICKTEIG, JEANNIE HANDERSON,
TYRONE MALONE, NEAL WEBSTER and
RALPH TRAPHAGEN,

Defendants.

A-1258-91T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHARLES MATSON, DANIEL LICKTEIG,
JEANNIE HENDERSON, TYRONE MALONE,
NEAL WEBSTER and RALPH TRAPHAGEN,

Defendants-Appellants,

and

ALEXANDER V. LOCE, TINA KRAIL,
LORI CHADWICK, JAMES MCWILLIAMS,
CHRIS MOSCHINSKI, DEBORAH SMALDORE,
WILLIAM HARRISON, JOHN ADAMS and
LISA ADAMS,

Defendants.

Argued June 2, 1993 - Decided **JUN 30 1993**

Before Judges Michaels, Baime and Wallace.

On appeal from Superior Court of New Jersey, Law Division, Morris County, whose opinion is reported at __ N.J. Super. __ (1993).

Patrick J. Mullaney argued the cause for appellant Alexander V. Loce (Mr. Mullaney and Cassidy, Foss & San Filippo, attorneys; Mr. Mullaney and Harold J. Cassidy, on the brief).

Richard J. Traynor argued the cause for appellants Tina Krail, Lori Chadwick, James McWilliams, Chris Moschinski, Deborah Smaldore, William Harrison, John Adams, Lisa Adams, Charles Matson, Daniel Lickteig, Jeannie Henderson, Tyrone Malone, Neal Webster and Ralph Traphagen (Mr. Traynor, attorney for appellants Tina Krail, Lori Chadwick, James McWilliams, Chris Moschinski, Deborah Smaldore, William Harrison, John Adams and Lisa Adams; Roger W. Daley, attorney for appellants Charles Matson, Daniel Lickteig, Jeannie Henderson, Tyrone Malone, Neal Webster and Ralph Traphagen; Mr. Traynor and Mr. Daley, on the joint brief).

Deborah Collins, Assistant Morris County Prosecutor, argued the cause for respondent (W. Michael Murphy, Jr., Morris County Prosecutor, attorney; Ms. Collins and John Connor, Assistant Prosecutors, on the briefs).

Lisa Glick Zucker argued the cause for amici curiae American Civil Liberties Union of New Jersey, Americans for Democratic Action, Choice PAC New Jersey, 80% Majority Campaign, Family Planning Association of New Jersey, League of Women Voters of New Jersey, National Abortion Rights Action League-NJ, National Council of Jewish Women, National Organization for Women, New

Jersey State Council of YWCAS, Planned Parenthood Affiliates of New Jersey, Right to Choose and South Jersey Catholics for Free Choice (Ms. Zucker, on the brief).

PER CURIAM

Following a trial in the Morristown Municipal Court, defendants were found guilty of defiant trespass, a petty disorderly persons offense (N.J.S.A. 2C:18-3b). Defendant Alexander Loce was assessed a penalty of $30 payable to the Violent Crimes Compensation Board. All other defendants were fined $250, assessed court costs in the sum of $25 and Violent Crimes Compensation Board penalties in the amount of $30. The Law Division again found defendants guilty after a trial de novo on the municipal court record. The same sentences were imposed except that defendant Loce was fined $250 and assessed court costs in the sum of $25 in addition to the penalty originally set by the municipal court. Three separate appeals from the Law Division's judgment were filed.

We need not recount the facts, which are fully set forth in the Law Division's oral and written opinions. Suffice it to say that all of the defendants entered a Morristown abortion clinic where Loce's fiancee was scheduled to terminate her eight week pregnancy. The defendants bound themselves with handcuffs and

bicycle locks in order to block the entrance to the operating rooms. Loce, who had previously been denied a restraining order, and the other defendants sought to prevent the scheduled abortion, but were ultimately arrested. Subsequently, the abortion was performed.

The municipal court permitted introduction of evidence regarding when human life begins and found that the fetus was a person. The court nevertheless convicted the defendants, holding that Loce's fiancee had a constitutional right to an abortion and that there was no legal justification for the trespass. The Law Division, finding no reason to decide when human life commences, determined that defendants wrongfully trespassed on the premises of the clinic and improperly used force to prevent a legal abortion. *State v. Loce*, __ N.J. Super __ (Law Div. 1993).

Although stated in a variety of ways, defendant Loce contends that (1) human life begins at conception and the unborn child enjoys the constitutional protection of due process under the Fourteenth Amendment to the United States Constitution and Article I of the New Jersey Constitution, (2) the genetic father has standing to raise the constitutional rights of the fetus and has an independent constitutional right to protect the unborn child, (3)

their rights are paramount to the privacy interest of the mother, and (4) the criminal prosecution constituted an improper intrusion upon the fundamental rights of Loce and the unborn child. The other defendants assert that (2) the Law Division erroneously excluded statutory defenses applicable to the attempted rescue of the "pre-born" baby, (3) the Law Division incorrectly refused to consider the "unrefuted proof" that Loce's eight week "pre-born progeny" was a live human being, thereby "decriminalizing their forceful rescue attempt," and (4) they have a right to assert the Ninth Amendment right to life possessed by the unborn child.

We now consolidate defendants' appeals and affirm their convictions. In reaching this result, we do not address the question when human life begins or whether that issue is justiciable. The right to an abortion guaranteed by the due process clause of the Fourteenth Amendment established by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147, reh'g denied, 410 U.S. 959, 93 S.Ct. 1409, 35 L.Ed.2d 694 (1973) has only recently been reaffirmed in *Planned Parenthood of Southeastern Pa. v. Casey*, 404 U.S. __, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). The purported rights asserted by defendants independently and on behalf of the fetus

are unsupported by case law, whereas the mother's rights, which they claim are outweighed, are firmly established. The simple and overriding fact is that each defendant committed a petty disorderly persons offense in an attempt to prevent a legal and constitutionally protected abortion. No amount of moral conviction as to the impropriety of the abortion would legally justify the offense or render its prosecution unconstitutional. However phrased, defendants' arguments to the contrary are clearly without merit. R. 2:11-3(e)(2).

Although not raised by defendant Loce, the fine and court costs imposed upon him by the Law Division must be vacated. A defendant who appeals from a municipal court action cannot receive a greater sentence after a trial de novo. *State v. De Bonis*, 48 N.J. 182, 188-89 (1971).

So modified, the judgments of conviction are affirmed.

Opinion and Judgment of Honorable Reginald Stanton

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY
APPEL NO. 251-91

STATE OF NEW JERSEY,	)	
Plaintiff,	)	CRIMINAL ACTION
v.	)	OPINION
ALEXANDER V. LOCE, et al.,	)	
Defendants.	)	

Deborah Collins, Assistant Prosecutor (Michael J. Murphy, Morris County Prosecutor, attorney), for the State.

Patrick J. Mullaney for defendant Alexander V. Loce.

Roger W. Daley for defendants Charles Matson, David Lickteig, Jeannie Henderson, Tyrone Malone, Neal Webster and Ralph Traphagen.

Richard J. Traynor for defendants Tiny Krail, Lori Chadwick, James McWillliams, Chris Moschinski, Deborah Smoldore, William Harrison, John Adams and Lisa Adams.

Michael Patrick Carroll for New Jersey Right to Life, amicus curiae.

Lisa Glick Zucker (Deborah A. Ellis, attorney) for American Civil Liberties Union of New Jersey, American for democratic Action, Choice PAC New Jersey, 90% Majority Campaign, Family Planning Association of New Jersey, League of Women Voters of New Jersey, National Organization for Women, New Jersey State Council of YMCA's, Planned Parenthood Affiliate of New Jersey, Right

to Choose, South Jersey Catholics for Free Choice, amici curiae.

STANTON, A.J.S.C. As a result of intercourse with defendant Alexander V. Loce, Ms. Z became pregnant. She informed Mr. Loce that she had arranged for an abortion to be performed in a certain physician's office in Morristown on September 8, 1990. On September 8, Ms. Z would have been pregnant for about eight weeks. There was no problem with the health of either Ms. Z or the fetus.

Mr. Loce urged Ms. Z not to have the abortion, but she persisted in her announced intention to have one. On September 7, Mr. Loce applied to the Chancery Division of the Superior Court for an order prohibiting the abortion. This request was promptly rejected by the Chancery Division. On September 7, Mr. Loce appealed on an emergency basis from the Chancery Division's denial of relief to the appellate Division of the Superior Court and then to the New Jersey Supreme Court. Both appeals were rejected. On September 8, Mr. Loce, accompanied by 14 anti-abortion activists who are the other defendants in this matter, forced his way into the physician's office where the abortion was to be performed. All 15 defendants handcuffed themselves

together and physically blocked movement within the office with the intent to forcibly prevent the physician from performing the abortion. Defendants persisted in their violent obstruction of the office despite legal notice to leave. They were arrested and removed from the office by the police. The abortion took place on September 8, 1990.

All defendants were convicted of the petty disorderly persons offense of defiant trespass under N.J.S.A. 2C:18-3(b). Each of them was fined $250 and required to pay court costs and a Violent Crimes Compensation Board penalty. All defendants have appealed to the Law Division of the Superior Court and their appeals are now before me for decision. The present appellate proceeding is technically known as a trial de novo on the record below. R. 3-23-8(a). This means that I must make original findings and rulings on the evidence, but that I am limited to the evidentiary record created in the Municipal Court.

The record in this case establishes beyond a reasonable doubt that all defendants are guilty of violating the defiant trespass provisions of the New Jersey Criminal Code, unless some superseding constitutional or legal rule excuses or justifies disobedience of the defiant trespass statute. The defendants have

attempted to establish such supeseding constitutional rules and such superseding legal rules. They have introduced testimony of Jerome Le Jeune, M.D., Ph.D., a professor of genetics, of Bernard Nathanson, M.D., an obstetrician and gynecologist, and of Francis Russel Hittinger, Ph.D., a philosopher. The purpose of the testimony is to establish that the fetus being carried by Ms. Z was a human being on September 8, 1990 and had been a human being ever since the moment of its conception. (For ease of expression, I will use the term "fetus" in this opinion to cover the entire prenatal process, and I include within it stages which are technically more precisesly referred to as zygote, morula, embryo and fetus.)

Based on the claimed fact that the fetus was a human being, the defendants argue that it was a person within the meaning of the Fourteenth Amendment of the United States Constitution, which reads in pertinent part: "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The defendants also argue that the fetus was a person within the meaning of Article I, Paragraph 1, of the New Jersey Constiution which reads: "All persons are by nature

free and independent and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."

Based on the concept that the fetus was a person, the defendants also asserted statutory affirmative defenses under N.J.S.A. 2C:3-5 (the right to use reasonable force to protect another person), N.J.S.A. 2C:3-2 (the right to use force as being necessary to save a person), N.J.S.A. 2C:3-8 (the right of a person entrused with special responsibility for the care, supervising, discipline or safety of another person to use force to protect that other person); Mr. Loce being the father of the fetus) and N.J.S.A. 2C:3-10 (the right to seize property under certain circumstances to protect a person).

The most straightforward legal analysis of defendants' arguments that they were justified in disobeying the defiant trespass statute because of state and federal constitutional principles and because of state and federal constitutional principles and because of state statutory affirmative defenses is as follows: The United States Supreme Court has ruled that a fetus is not a person within the meaning of the Fourteenth Amendment or within

the meaning of any other provision of the United States Constitution. Roe v. Wade, 410 U.S. 113, 156-159 (1973). In Right to Chose v. Byrne, 91 N.J. 287, 299 (1982), the New Jersey Supreme Court expressly purported to decline to determine life begins or at what point a fetus is a person. But the court so clearly gave priority to the health claims of the mother over the life claims of the fetus (and without going through any balancing of rights analysis) that the necessary inference, in my view, is that the court actually treated the fetus as not being a person. 91 N.J. at 310. See also Giardina v. Bennett, 111 N.J. 412, 420-422 (1988), holding that a fetuss is not a person within the meaning of the Wrongful Death Act, and State in the Interest of A.W.S., 182 N.J. Super 278 (App. Div. 1981), holding that a fetus is not a human being within the meaning of the criminal homicide provisions of the Code of Criminal Justice. So far as defendant's claimed statutory justification under N.J.S.A. 2C:3-5, 2C:3-2, 2C:3-8 and 2C:3-10 is concerned, the language of the statutory provisions, the legislative history and the desirability of construing statutes so as to be compatible with constitutional limitations all lead me to conclude that the New Jersey Legislature in enacting the Code of Criminal Justice in 1978 probably did not intend to

treat a fetus as a person, and certainly not when doing so would limit a woman's constitutionally protected right to have an abortion. Here I must note that statutory provisions dealing with justification are to be construed in the context of ordinary, traditional crimes where we have independetly functioning people interacting violently with each other. If a fetus is a person, it is a person in very special circumstances --- it exists entirely within the body of another much larger person and usually cannot be the object of direct action by another person. In short, as a trial judge of the Superior Court of New Jersey, I cannot find any legally acceptable basis for excusing or justifying the conduct of the defendants in disobeying the defiant trespass statute.

I also note that when the New Jersey Legislature adopted the present Code of Criminal Justice in 1978, it abolished all common law crimes. N.J.S.A. 2C:1-5. It also repealed most pre-existing statutory crimes. N.J.S.A. 2C:98-2. The present Code of Criminal Justice does nto prohibit abortion or regulate it in any way. Hence, entire aside from judicial interpretation of the United States Constitution and the New Jersey Constitution, women have been legally free to have an abortion in New Jersey for more than 20 years. The Legislature could not have intended to authorize

other persons to use force to prevent a woman from doing what she had a legal right to do.

I am sure that defendants and their counsel have anticipated all along that a trial judge would be constrained to reach the legal conclusions which I have reached in this case. I believe that the real thrust of their proofs and their arguments has been directed at the appellate courts which may eventually hear this case rather than at stage. They would hope to have me as a trial judge make findings of fact which they might later use as a base for moral and legal arguments before appeallte courts. Ultimately, they would like to persuade the United States Supreme Court to overrule Roe v. Wade.

The particular finding of fact which defendants urge me to make is that a fetus is a human being from the moment at which the sperm and the egg unite. The testimony of Dr. Le Jeune, of Dr. Nathanson and of Dr. Hittinger is all directed (from varying disciplines and viewpoints) towards that end. I do not regard the question of when human life begins (or the related question of when the fetus becomes a person) as a religious issue, or an abstractly scientific issue, or a remote philosophical issue which is beyond the ken of lawyers and judges. It is an issue of practical

ethical importance and of very practical legal impact. Lawyers, judges, legislators and public policy makers have the right, and probably the duty, to address this issue. But they must addresss it in the right context, with caution, with the right sense of respect, with appropriate humility, and in circumstances likely to produce comprehensive data and rigorous analysis. Under the appropriate condition, I, for one, would be willing to make a judicial finding of fact on this issue.

However, the circumstances of this case are not appropriate for judicial fact finding of the kind sought by defendants. The factual record in this case was created in the Morristown Municipal Court in the course of a prosecution for a petty disorderly persons offense. In New Jersey, municipal courts deal with disorderly persons offenses and moter vehicle violations. Their procedures are somewhat summary in nature and are designed to produce fair and quick results in relatively simple cases. Municipal courts do not have the procedural tools or the time to deal with truly complex matters. They are not suitable places in which the adjudicate complicated factual or legal issues. See very generally, Belleville v. Parrillo's, Inc. 83 N.J. 309, 318-319 (1980).

Drs. LeJeune, Nathanson and Hittinger are persons of some

distinction whose testimony was interesting and thought-provoking. So far as it went, it was arguably plausible. However, the direct examination by defense counsel was highly unstructured. The municipal prosecutor conducted cursory cross-examination because he thought that the witnesses' testimony was irrelevant to the true legal issues in the case. The prosecutor presented no witnesses at all on the issue of when human life begins, again because of preceived irrelevancy. The examination of witnesses was non-probing and the proceeding was totally non-adversarial on this issue. The proofs were so limited and so one-sided that a judge cannot sensibly make a definite finding of fact based upon them.

Furthermore, there has been no careful argument or analysis in this case on the threshold question of whether the issue of when human life begins is an empirical question of fact or an essentially non-empirical value judgment. In any event, whether the issue is one of fact, or of value judgment, or some subtle mixutre of afact and value judgment, I will not undertake to make a finding or ruling about when human life begins under the conditions obtaining in this case.

I also note that even if we were to take it as established

that human life begins at the moment of conception, that is, when the sperm and the egg unite, it would not necessarily follow either morally or legally that the State could properly use compulsory processes of law to prevent a woman from having an abortion, and it would not necessarily follow that private persons could properly use physical force to prevent a woman from having an abortion. If a fetus is a human being from the moment of conception onwards, I think it would then follow that an abortion would be a serious moral wrong under almost all circumstances at any time during pregnancy. People who though that a fetus was always a human being (and, indeed, many people who thought that a fetus was only potentially a human being), would probably develope a whole series of interrelated moral rules.

They would encourage men and women to conceive offspring only when they were committed to brining them into the world and raising them to competent adulthood in a reasonably supportive and loving family environment. They would try to prevent unwanted pregnancies and irresponsible pregnancies. To those ends, they would discourage sexual relations outside of loving, mature and stable relationships, and whenever sexual relations did occur they would encourage the use of effective

contraception unless both the man and woman affirmatively wanted a child and were firmly committed to the responsible rearing of the child.

If abortion is viewed as morally wrong under most circumstances, then it seems to me that the first line of attack should be to reduce unwanted pregnancies. Well-designed and effectively implemented programs to promote sexual morality and to promote effective contraception could probably effectively reduce the number of unwanted pregnancies and the number of abortions. However, given the volatility of the human sexual drive and given the inevitable failures of contraceptive measures, I am sure that we will always have a significant number of unwanted pregnancies. When an unwanted pregnancy occurs, if we regard the fetus as a human being, then the woman involved would be under a moral obligation to carry the pregnancy to term, except u nder very special circumstances involving things such as rape or serious risk to the woman's life. The husband or other male co-responsible for the pregnancy would be morally obliged to be supported of the women in sustaining the pregnancy and in raising the child. Concerned persons around the pregnant woman would encourage her to bear the child and would take steps to empower

her to do so with dignity and in safety.

Here I think it is useful to say something about the relationship between morality and law. The legal rules of a society are informed by its moral values and are broadly reflective of them. (This is especially true in the area of criminal law.) Legal rules, in turn, ofetn influence our perception of what is moral. However, law and morality are not and should not be identical. There are many important moral principles which cannot and should not be translated on a one-for-one basis into enforceable legal rules. This is particularly true in a society which is free, open and pluralistic and which is legally organized as a constitutional democracy.

In the kind of society which we have in New Jersey and in the United States, if we were to treat a fetus as a human being from the moment of conception onwards, and if we were to treat abortion as morally wrong under almost all circumstances, we would probably adopt some legal rules reflective of that moral value. We would probably have criminal laws protecting women against abusive men, we would probably have health laws making prenatal care available to all pregnant women, we would probably have health laws making medical care available to children, we

would probably have laws providing affordable housing for families, we would probably have laws making child care available to working mothers. In fact, we already have some of these laws, because virtually all people think it is right to take at least some legal steps to empower women who want children to bear them safely and raise them decently, even though many people also view abortion as morally valid under many circumstances.

In our society, it might come to pass that most people would view the fetus as a human being from the moment of conception. The interpetation by United States Supreme Court of the United States Constitution might evolve in such a way that federal constitutional limits on anti-abortion laws would be removed. Indeed, such an evolution may be taking place at the present time. See Webster v. Missouri Reproductive Services, 492 U.S. 490 (1989). A similar process could occur with respect to the New Jersey Supreme Court and the New Jersey Constitution. Or the people might by formal amendment remove existing constitutional limitations. Even if all those things were to happen, I would hope that our legislatures would be wise enough not to recriminalize abortion.

When the law makes it a crime for a woman to have an

abortion, or when the law makes it a crime for a physician to perform an abortion, the state is then using legal proces sto force a woman to carry a pregnancy to term even though she does not want to do so. This inherently involves pervasive governmental intrusion into the internal bodily processes of the woman and into her most intimate emotional and psychological functioning. Many women (and many of the men around them) would feel cruelly violated. They would be bitterly resentful. There would undoubtedly be compliance problems, and, if criminal anti-abortion laws were to be uniformly and effectively enforced, there would probably have to be overt and widespread coercion of substantial numbers of people. The general result would probably be state-sponsored oppression on an enormous scale. I suggest that a legal policy of criminalizing abortion would be most unwise. It would also be unjust and morally wrong.

Even though one might agree with the defendants that a fetus is always a human being, and even though one might agree that abortion is morally wrong, I would suggest that wise moral policy and wise legal policy would seek to help women to avoid having unwanted pregnancies, and when women did become involved in unwanted pregnancies, it would seek to encourage and

empower them to sustain the pregnancies and to rear the resulting rchildren under safe and supportive circumstances. Here it is important to reflect upon the special circumstances in which the fetus exists -- it exists entirely within the body of its mother. If the mother is unwilling to carry out her moral duty to sustain the pregnancy despite our encouragement and our efforts to empower her to do so, then the only fully effective ways in which the rest of us can help the fetus are by literally cutting open the body of the mother and taking out a fetus which has reached the point of viability, or by literaltaking control of the mother's body and monitoring all her activities minute by minute, day by day, until she gives birth. Most of us are not willing to give such power to the state, and we would be less willing to give it to private parties such as the defendants. Human experience teaches us that limitless power to do good can too readily become unlimited power to oppress and to enslave. Accordingly, wise moral policy and wise legal policy would stop short of coercing women to have children against their will.

- - - - - - - - - - - - - - - - - - -

Much of what I have said above with respect to abortion is not directly applicable to the actual circumstances in which

defendants find themselves. When the defendants used force on September 8, 1990 to physically prevent Ms. Z from having an abortion, Ms. Z had the right under the United States Constitution, under the New Jersey Constiuttional and under federal and state statutory law to have an abortion. Defendants disagreed with the constitutional rulings involved and with the statutory laws. They had the right to disagree and they had the right in our free, open, constititutional democracy to work lawfully in a wide variety of ways to change existing constitutional and legal rules.

When the defendants forced their way into the physician's office on September 8, 1990 to physically obstruct the physican and his staff from performing the abortion and to physically obstruct Ms. Z from having the abortion, they used violence. The violence was not as bad as striking the physican, or the staff or Ms. Z would have been, but it was real violence, significant violence. When the defendants employed that violence, they, in effect, asserted that they were not bound by the normal decencies and constraints of our constitutional democracy. They asserted that they had the right to impose their views about abortion by physical force upon Ms. Z. They also asserted that they had the right to impose their views by force upon society in general. When

they did that, the defendants mounted a frontal assault upon the whole concept of ordered liberty by which our society is governed. They trampled upon the fundamental constitutional values by which we conduct our civil society.

There is undoubtedly much room for disagreement about what our society's approach to the problem of abortion should be. However, I see little room for disagreement about the wrongness of the way in which the defendants conducted themselves on September 8, 1990. Their general intent may have been good, but what they did was profoundly wrong. Each of them deserves the condemnation of a criminal conviction. Each of them is guilty of defiant trespass. Each is fined $250. Each of them must pay court costs of $25 to the Morristown Municipal Court. Each of them must pay a penalty of $30 to the Violent Crimes Compensation Board.

/s/
Reginald Stanton
Judge of the Superior Court
Assignment Judge

RS:amg
514-91

W. MICHAEL MURPHY, JR.
MORRIS COUNTY PROSECUTOR
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ATTORNEY FOR THE STATE OF NEW JERSEY

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY
CRIMINAL PART
APPEAL NO.: 251-91

THE STATE OF NEW JERSEY,

Plaintiff,

vs.

ALEXANDER V. LOCE, ET AL.

Defendants.

THIS MATTER having been heard before the Court on the 6th day of September, 1991, in the presence of Deborah Collins, Assistant Prosecutor, appearing for the State, and Patrick J. Mullaney, Esq., attorney for defendant Alexander V. Loce, Roger W. Daley, Esq., attorney for defendants Charles Matson, David Lickteig, Jeannie Henderson, Tyrone Malone, Neal Webster and Ralph Traphagen, Richard J. Traynor, Esq., attorney for defendants

Tiny Krail, Lori Chadwick, James McWilliams, Chris Moschinski, Deborah Smoldore, William Harrison, John Adams and Lisa Adams, Michael Patrick Carroll, Esq., attorney for New Jersey Right to Life, amicus curiae, and Lisa Glick Zucker, Esq., attorney for American Civil Liberties Union of New Jersey, et al., amici curiae; and the Court having read the transcript of the Morristown Municipal Court and having heard the oral arguments of counsel; and for good cause shown:

IT IS ON THIS 17 day of September, 1991,

ORDERED that the defendants are found guilty of N.J.S.A. 2C:18-3b. *Each and every defendant is guilty.*

The reasons for this decision are set forth in the oral opinion of the Court, delivered on September 6, 1991.

/s/ Reginald Stanton
REGINALD STANTON, A.J.S.C.

REGINALD STANTON
JUDGE OF THE SUPERIOR COURT
ASSIGNMENT JUDGE

MUNICIPAL COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY
CRIMINAL ACTION
DOCKET NO. C1771, ET SEQ.

STATE OF NEW JERSEY,	*	
	*	
V.	*	APRIL 23, 1991
	*	
ALEXANDER LOCE, et als.	*	
	*	
Defendants.	*	
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B E F O R E: HONORABLE MICHAEL J. NOONAN

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Testimony of LeJeune, Nathanson and Hittinger

JEROME LEJEUNE, M.D., Ph.D., having been duly sworn according to law, testified as follows:

THE JUDGE: Doctor, I heard you pronounce your own name and we butchered it. So you may have a seat.

All right, you may proceed, counsel.

DIRECT EXAMINATION BY MR. MULLANEY:

Q Doctor LeJeune, could you please for the record, state your name and how to spell it?

A Your Honor, my name is Jerome LeJeune.

Q We did butcher that one.

A Yes. I am a professor of fundamental genetics in the Child's Hospital of Paris and the Faculty of Medicine of Paris.

And I began as a pediatrician and then I became a geneticist. Now I am a pediatrician and a geneticist.

And in my consultation, which is probably the biggest in the world for mentally retarded children having difficulty due to a chromosomal mistake, we examine every year 2000 children, and we have record of 30,000 of them.

So our job is really to try to understand what makes the nature of every human being; why some of them are afflicted by constitutional difficulty, and to try later to treat that, if we can, so that we would be able to some day to bring them back to normal; and to give them what nature has refused to them.

Q Dr. LeJeune, could you please tell the Court a little bit about your educational background?

A As I said I was MD and PhD, and have been always in Paris as a student.

And later when I finished my studying and I got my degree in medicine and genetics, I was representative of France and in the United Nations scientific committee on the danger of atomic

radiation, because of geneticist.

And in that function, international function, I came very often to the United States to go to the UN and I met one professor of California Institute of Technology.

And I was invited to give the first course of human genetics in Cal Tech because in this highly educated university they had not yet had any course of human genetics.

They had a lot of course in fundamental genetics. I was the first professor of fundamental genetics in Cal Tech.

Q As part of your serving on this committee, Doctor, did you have opportunity to go to the Kremlin in Moscow and meet with Mr. Brezhnev?

A Yes. That is as a geneticist, I was vice-president of the Genetic Congress in Moscow and I was known by my fellow professor of genetics in Moscow and because I am a member of the Pontifical Academy of Science and because I was a member of the, of a special group that we had to study of the dangers of atomic war I was sent by the Pope, John Paul II, to Moscow.

It was around three days after Mr. Jaruzelski had declared the war against people of Poland; in other words, declared a state of war against its own population.

And because we had prepared the reports about the dangers of -- as a specialist I was only speaking of the genetic dangers of the atomic war, then the Holy Father wanted me to be presenting a report all the powers of the world who were having the atomic power.

And so some of us of the Pontifical Academy of Science went to America to see Mr. Reagan and some came to France or England to China and India. And I was sent by the Holy Father to see Mr. Brezhnev.

And it was a very curious situation. But I am not going to talk too much about that.

Q Dr. LeJeune, you have been credited with the first discovery of the first chromosomal abnormality in man.

Could you please tell the court about your discovery of Down's Syndrome?

A Yes. Down's Syndrome is a very peculiar disease in the sense that the baby who are born with it owe their difficulty to an excess of genetic material.

And it was long ago, nearly thirty years ago that I discovered that they had an extra chromosome and this chromosome is now known as number 21.

The classification of chromosome was not yet established at that moment because it was the first disease to be discovered to be due to this chromosomal defect.

And those babies, in fact, suffer because they have too much of those table of law of life which we call chromosomes.

And to make a very complex story short I would say that inside the chromosomes are written in a very special ribbon, which is DNA, all the tricks of the trade to be a human being, if those chromosomes are human chromosomes.

If they are chimpanzee chromosomes, all the tricks to be a chimpanzee are written.

Q Doctor LeJeune, we are trying to qualify you as expert at this point.

A Yes.

Q We will get into that in a minute. I hate to cut you off because it's an interesting story. For your discovery of Down's Syndrome did you win any awards?

A Well, I had the honor of receiving the Kennedy Prize from the hands of the late president and, because of this discovery, and I got also the William Allen Memorial medal in this country which is the highest prize that you can get in genetics in the world.

It is given by the American Society of Human Genetics in this country. I received it in San Francisco.

Q What year was that, Doctor?

A Oh, I am not good with remembering the times. It was, if I'm correct, around '62 or '64. I think that the Kennedy Prize was '64.

Q Could you tell the court --

A That's -- I'm sorry. I don't remember.

Q Could you tell the Court of any other boards or academies of which you're a member?

MR. BANGIOLA: I am prepared to stipulated the witness is an expert in genetics. Excuse me.

MR. MULLANEY: Your Honor, it is just not that often we get someone with the stature of Dr. LeJeune. But if the Court is willing to recognize him, I offer the Court Dr. LeJeune as expert in genetics and human reproduction.

THE JUDGE: And prosecutor is willing to stipulate that?

MR. BANGIOLA: Without objection.

THE JUDGE: The doctor who discovered Down's Syndrome is an expert in genetics.

MR. BANGIOLA: Doesn't seem like much of a stretch.

THE JUDGE: I will accept that stipulation and I welcome you to the Morristown Municipal Court.

THE WITNESS: Thank you, your Honor.

THE JUDGE: All right. You may continue.

BY MR. MULLANEY:

Q Thank you, your Honor. Dr. LeJeune, could you please describe the process of human reproduction?

A It is a very long story, your Honor. Because life is with us since millennia. But if life continue from generation to generation each of us has a very unique beginning, which is at the moment that all the information necessary and sufficient to be that particular human being, which we will call later Peter or Margaret, depending on its own genetic make-up, when this whole necessary and sufficient information is gathered.

And we now know from experience both in animals and now in human beings, that this moment is exactly the moment at which the head of the sperm having penetrated inside the ovum, then the information carried by the father encounter in the same recipient cell, the information carried or transmitted by the mother; so that suddenly a new constitution is spelled out.

It is very curious that biology and the science of the law are

speaking the same language.

From a person strongly willed and with good health we'd say he has a felicitous constitution. And from a state in which every person is protected by the law we say it has an equitable constitution. And from a state in which every person is protected by the law we say it has an equitable constitution.

And exactly as in a free country no law can be enforced if it has not been entirely spelled out and voted for, we have the same process in biology, that a new human being does not come into existence until all the specifications which spell out its own personal constitution are, have been there.

And the voting process even exists in biology, which is the choice of the sperm.

Because there are maybe hundreds or thousands of 10 thousands sperms swimming around one egg, and one is elected. And that is a voting process.

And at the moment the human constitution is entirely spelled out a new human being begins its career.

That's not rhetoric. That's not fancy, or hope of a moralist. It is just an experimental phenomenon.

Q Dr. LeJeune, where is this information specifically

contained?

A This information is specifically contained in two different support. One is DNA. DNA is a long thread molecule. And to give you an impression, your Honor, this flat ribbon is roughly comparable to the tape that you could have in a tape recorder. But it is very minute.

Inside the head of a sperm there's a long thread of one meter, one yard say. And this is so tightly coiled in 23 little pieces that we call chromosomes that the whole thing is inside the head of the sperm and it is, the volume of it is upon the point of a needle.

In the first place in so small a volume, all the data which will spell out the way to build all the proteins which will make the machine tool inside the cells is entirely spelled out.

The same is true in the ovum, in which 23 little pieces of chromosomes one meter long all together stay there until they receive the help of the 23 from the father. Now that's part of the information and it is a text book.

Most of the people will stop there and tell you genetic information is carried by DNA.

That's perfectly true. But there's another type of

information the amount of which is even much more important and much bigger, which is inside the cell.

Inside the ovum there are, there have been prepared billions of molecules highly specialized who will recognize and be recognized by the signals given by the genetic make-up.

And to make the thing understandable, remember, that while you use a tape recorder if you buy a mini cassette in which the music of an artist such as Mozart is recorded, then if you put it in your tape recorder, you will get a symphony.

But curiously on the tape there are no notes of music, and inside your tape recorder there are no musicians.

Nevertheless, by a special code written on the tape, some information is given to you tape recorder so that it will read it and it will make the air moving by the loud speaker so that what is coming to you is not the orchestra, not the musicians, not evidence of music, but the genius of Mozart.

That's the way life, the symphony of life, is played. That is inside the egg, which receive the tape bank from father and which has its own tape bands, and which makes 23 plus 24, 46 volumes of the table of the law of life.

The cassette itself is a tape recorder and inside the tape

recorder, to build the tape recorder you need an enormous amount of information to know now to build the machine, how to use the material, how to do the whole thing which is a tape recorder.

Now when you speak about genetic information you have to remember you have the long ribbon of DNA which are the mini cassette of the symphony of life, but you have the cell itself which is the magnetiphone, which is a magnetiscope, which is the tape recorder; and which has an enormous information.

Because the tape recorder, to read a tiny ribbon like this is a fantastic machine, extremely complex.

Then to answer your question it's very difficult to spell out the amount of information in the first cell.

We can do it easily for the ribbon because we know the number of betas, of bytes of information which are there, some 50 billions, but inside the egg the number is much higher, and nobody for the moment can measure it and can count it.

But we can say safely that when we look at the Cray Two, this enormous computer that just -- we just recently put another, the power of a Cray Two is vanishing in smoke -- compared to the amount of information which is inside one reproductive cell once the fecundation has occurred.

Q Dr. LeJeune, fecundation being the French phraseology for, what do we call it?

A Fertilization.

Q Once fertilization, once conception has occurred, could you tell the Court is anything added after that point?

Does Peter or Margaret come into being, so to speak, through addition information?

A Well, that was a very interesting acquisition of modern science. Because for a long time it has been believed that the opinion that the mother, the feeling of the mother, could do something to the baby.

And we know now that everything is written inside the first cell. I have to come back to this concept of conception, because it is a very remarkable fact that in all the languages coming from Latin, we use the same word either to express an idea which is come into our mind, or to a new being coming into life.

We conceive an idea. We conceive a baby. A baby is conceived. Conception do apply just as well for defining what will animate a matter in a human nature or what will animate your mind within your idea.

And that is, so to speak, an extraordinary description of

reality which is at the very beginning the information and the matter, so to speak, the spirit and the body are so intimately interwoven that we use the same word to say spirit animated by your ideas, or life of a new human being animated by genetic property; conception.

Now this moment a new human being is conceived is, really, as for the conception of a new constitution, when the whole thing has been spelled out.

Now we know and I think there's no disagreement among biologists everywhere in this world that after fecundation no new information goes in.

Everything is there at the moment of the, just at the moment after the entry of the sperm, or it is not enough and it will fail.

Either the whole information for the human being is there and the human being can develop and organize, or it is not there and no human being will develop at all.

Now nature has invented an extraordinary device to tell us that nature do protect the privacy of the very first stage of the human being. The right of privacy is written in that way in biology.

The egg is a little sphere of one millimeter and a half as a diameter. But it is not naked. It has some plastic bag around that we call from Latin zona pellucida, because you can see through --

Q Would you spell that?

A Zona pellucida? I am sorry. I can't spell in English.

MR. MULLANEY: We couldn't pronounce your name either.

THE WITNESS: I can write it down.

MR. MULLANEY: Z-o-n-a

p-e-l-l-i-c-u-d-a?

A That's correct. And this very curious plastic bag so to speak is, in fact, the perfect control of the privacy of the new being because as soon as the head of the sperm who got first was able to burrow inside the zona pellucida, as soon as the head comes inside, suddenly in a micro-second, this lucida, this transparent membrane becomes suddenly changed physically, and it becomes entirely not permeable to any other sperm.

It's a mechanism of an extraordinary precision which prevents that many sperm could go inside the one egg.

Because you need only one sperm to one egg to build a human being or to build any other being, if it is bi-sexual reproduction.

Q Dr. LeJeune, why would you say that the fertilized egg, or would you say that the fertilized egg, is a member of the human species?

A I would say it for a great number of induction, scientific induction, and by some experimental observation directly.

Q Could you explain those to the Court?

A Yes. For example when I spoke about the chromosomes, it would be very long before we can read all the information written on it.

You know that there's an enormous project which is a human genetic project especially in this country. It costs billions of dollars.

And it is supposed to read all the, what is spelled out inside the chromosomes. We have not yet achieved that.

We can read small segments but it is enough. Then we are not in a position of reading the whole table of the law of life which are inside the volumes which are what is called the encyclopedia of life.

But we know we have 23 volumes coming from father and 23 from mother. And on the 46 of them we can read what is written on the back of the volume, so to speak, the name of the

volume, because the chromosomes have a form.

They have a given length, a given position of the centromere (phonetic) and inside the little head of the chromosome we can see little bands which are typical of each part of our gender.

It is so simple, although it takes maybe one year to be able to recognize all of it, that in a month from now I will have to correct the examination of cytogenetics in the University of Medicine in Paris and I will show to some of the students pictures of the chromosomes of a chimpanzee.

And on the picture was a chromosome of a man. And the one who could not tell me this one is a man, this one is a chimpanzee, would fail that examination. It is that simple.

Q Doctor LeJeune, it is your testimony that there's a physical difference between the chromosomal make-up, a physical difference, of the human being and every other species?

A Well, that's no doubt. There's no other species which has the same chromosomal constitution as human being.

But that is not true especially for us. It is true for every species. We can look at the chromosome of a chimp and say this one is a chimp. This is an orangutan. This is gibbon and this is a

gorilla.

Each species has its own shape of chromosome that we can recognize.

Q At what point in the human reproductive process does human specificity exist?

A It exists at the beginning, that is the fecundation, at fertilization, at conception.

Q It is your testimony that if one were able to observe a human fertilized egg having not divided yet and one of a chimpanzee having not divided yet, that there would be physical differences?

A I have no doubt and very easy to recognize. The only difficulty is that because there's only one cell, if you look what is inside that cell you will kill that cell. And I am not going to do that in a human embryo, in a human being.

But I would have no reservation to do that job with a fertilized egg of a mouse and it's done, has been done repeatedly.

And you can look at the chromosome and see it is a mouse and not a rat. It is as simple as that. So it's not any longer inference, a deduction. It is just plain observation.

Q Dr. LeJeune --

A But I would add just that if it was not true, life would not be possible.

Q Why is that?

A Because if the first egg was not belonging to a given species at the moment it is conceived, the species would not exist at all.

And you would see that sometime an elephant can begat a mouse and it does not happen. Then we know by just common judgment that it has to be like that.

Now science has the advantage today that not only we can say by logic, well, sure it should be like that; we can say now by looking at it, we are sure it is like that.

Q Dr. LeJeune, could you tell us about the Jeffrey bar code and the process of methylation?

A Well, that is a very interesting piece of information which dates from around four years now, that a British gentlemen, Mr. Jeffries, invented that there were a part of the chromosomes in which the DNA was repetitive.

That is, the same sequence is repeated ten times, twenty times, a hundred times.

And it is supposed now that those sequences are a

recognition system, how to build the nucleus, how to have this long ribbon going around and not being knotted, so to speak.

And, well, not to be too complex, what Mr. Jeffries found was that because those repetitive DNA many change by mutation can occur in those fragments without doing any harm because some of the sequence will still be good and the race is repeated.

And then they found a trick so that with a special enzyme you could cut this DNA, have it migrating on a special substrate and having it recognized by a given probe that the result it -- the technique would be a little to explain.

But the result is very obvious. It looks very much like the bar code that you have in a supermarket.

You know when you buy now something in the supermarket, instead of writing the price and what it is, there are various lines of various widths, of various distances and with an optic reader.

You just go through the bars and it tells inside the computer what it is product and what you should pay for it.

How the Jeffries system does exactly the same thing, that is, having extracted the DNA, and having looked at it with that technique you see the bar code of the person.

And the demonstration by Jeffries was again, the demonstration that what was inferred to be, was correct: that is, each of us is absolutely unique, that is the sequence of bands is absolutely typical of the person you're looking at.

Q Dr. LeJeune, that's specific within the species, as to an individual within a species?

A It is specific of the species, that's correct. But it is specific of the individual.

Q So if I could frame the question?

A It is personal to an individual. It is so to speak its identity card, which cannot be falsified because you have this identity card written in each of your cells.

In all of your cells it is always the same pattern that you would get if you were looking at it.

But this pattern is not only typical of each of us. But if you look at the pattern of the DNA by the Jeffrey's picture of dad and mom of this person, we will see that this person has a sequence of the bar code which is personal to this person.

But we will see that half of the bands were present in Dad, and half, the other half was present in Mom.

So that we can recognize at one glance beyond any

discrepancy in calculation that this person is the progeny of those two persons.

And we can demonstrate that no other persons in the world has exactly the same bar code.

Q At what point does the individuation take place?

A Oh, that takes place at fecundation, at fertilization, at conception. Because it just tells us that the constitution of this person is personal to this person.

Q Dr. LeJeune, it is your testimony that we have at conception both species specificity and a casting of the individual within the species?

A Yes. And I would say that very soon we will build machines very comparable to the supermarket with an electronic reader so that we will go through a bar code and have the whole thing studied by computer.

Just for the moment we look at it. But it could be done by computer, exactly like in the supermarket.

But the only thing that the biggest computer will never tell us will be the price of the human life.

Q Dr. LeJeune, based upon the empirical data you presented do you have a conclusion as to what exists at the

moment of fertilization?

A Well, at the moment of fertilization what exists is a pure novelty. It has never occurred before.

It's a new constitution of a new personally devised constitution for this person.

Q It you had to give it a name what would you call it?

A I would call it a human because I know that the whole information is human. I can read it. I can see the dimensions and make up of the chromosomes.

I can be sure it is human. Now I would say it is a being because I know it is by its own information that it will develop itself.

It just needs nurture and protection. It is just what it needs. Then being human, it is a human being.

I would not have any definition other than it is a human being. But if I could say a word about a second discovery, because what I felt in France, the curious decision of the Supreme Court in America.

I was surprised by one phrases which was that it was not possible to reach agreement on when human life begins.

But that was 18 years ago. And Jeffries system was not

known, and what was not known is now the Sorimy (phonetic) and many others which I will not quote all of them by their name which is the methylation of DNA.

If I am allowed, your Honor, it is very complex. It's scientific jargon. But it is directly relevant to the notion what is a human being at it's beginning and it dates from the last four years and the developments of less than six months ago.

And if I can say a word about it I will try to make it rather clear if I can.

THE JUDGE: All right, Doctor. I would like you in doing that to answer two questions.

THE WITNESS: Yes, sir; your Honor.

THE JUDGE: Number one, in doing your description I want you to tell this Court if you can answer the question: What is a human being; and when does a human being come into existence? When does human life begin? In that context if you can, answer those two questions.

THE WITNESS: Well, I will start again by the third one, your Honor, with your permission, that human life never begins. It continues because human cells are alive. And we come from cells from our parents.

So that the continuity of life is no question. And if you ask me when human life did begin, you ask me when the first human being came into existence.

Not me, not us, but our forerunners. And that would b e an evolution description which I would be very interested to discuss with you. But maybe it is too far back.

THE JUDGE: I will rephrase the question.

When does each unique constitution come into existence?

THE WITNESS: Then I will go back --

THE JUDGE: In the continuum?

THE WITNESS: Yes, the human constitution happens at the moment the genetic information coming from the father goes in the cell which is ready to have it, which is the female cell.

And once the zone pellucida has closed entirely, the information is locked in. No one can enter later. And all of it has to be there.

To answer your question when does this special constitution begin, it's very simple; at the moment which is micro-seconds of the change of the zona pellucida which now is locking in this particular human constitution which is a new being.

Now what is a human being? That's very simple. A human

being has to be human, has to be a being. Then a human being is only a member of our species.

An egg of a chimpanzee can't be a human being because it is a chimpanzee being. But every time that genetic information is human, every time that this message which is at the beginning of life which is alive and which is life, as soon as this message is really a human message then this life is a human life.

And if it is a being, this being is a human being.

THE JUDGE: Next question.

MR. MULLANEY: Thank you, your Honor.

BY MR. MULLANEY:

Q Dr. LeJeune, could you describe as we go through human development in the physical sense, what happens to the level of information contained in any one cell?

A That was a very complex subject, but when I began my study in genetics, because it was calculated that we have possibly 50 thousand genes in one cell, then we have 50 thousand genes in this little sphere of one millimeter and one-half which is a fertilized egg.

Now if all of them was performing their duty at the same time, the amount of energy would no only play the symphony, it

would seem to be exploding.

It's simply impossible that all the genetic information is dictating all that it knows at the same time.

Exactly like in a company, in a polite company when somebody is talking the others have to listen.

Then they can interrupt and they can say what they have. But if all of them are speaking together, it doesn't work.

Q But Dr. LeJeune, everyone is there even though they are not speaking; is that correct.

A Yes, sure. Everything is there.

But now the order is to be given by another instruction.

Now we come to the second level I wanted to speak about, your Honor, because it was totally unknown four years ago.

Which is that not only that this ribbon of DNA has a message written letter by letter, piece by piece, in the DNA and the sugar phosphor back bone.

But this ribbon is not as dull on the tape as the tape we put in the tape recorder.

Because superimposed to the basic information there are some indication this part must be read immediately, this part is to be read later.

And the way it is achieved is by methylation of cytosine which is all on the piece of DNA.

Q Could you spell methylation, Doctor?

A I will write it down. Methylation of cytosine, just to be clear.

But now, what it means is exactly what does a good student do when preparing an exam? He has to underline some parts of the book because he has to know that immediately tomorrow.

And some parts he cross because he doesn't want to learn it just now and he will come back to it later.

Now it is what is meant by the methylation processes, the message is well written and everything is written to make a human being, to be a human being.

But at the moment of fecundation part of the DNA coming from father is underlines in the male way and the DNA coming from mother is underlined in the mother way.

And, therefore, the fantastic discovery was never expected I may say ten years ago. Nobody predicted it; that, in fact, father underlines instructions to make immediately the membranes inside which the embryo will develop itself, so to speak, its space

capsule; and to make the placenta which is the body by which it will take the nutrients from the vessels of mother.

That's underlined on the sperm, not on the egg. But on the egg what is underlined is all the tricks of the trade to make the spare pieces which if they are put together will build an individual.

Now it is extraordinary because it was a moving observation for geneticists to see that in this one millimeter and a half sphere of living being, this separation of the tasks which we see in the ordinary life, building the hut and go hunting that is typically of the man.

And the man in biology builds the membranes which is the shelter and the placenta which is a gathering food system.

On the other hand it is to the feminine genius to underline the way how to manufacture a baby.

And all that is written in the first cell. Now what was the greatest consequence of the discovery was that it is impossible and it is definitely ruled out to make a genetic constitution from one parent only.

That is, it is not possible in an egg to put only two pronucleii coming from mother. It will not be a human being. It will be a teratoma and it will make spare pieces.

It will make skin, hair, teeth, some nervous -- cells.s But not at all build a form. There will be no baby.

On the contrary if on an egg you remove the maternal nucleus and you put two paternal nuclei it will not be anyway a human being.

It will produce membranes and tiny placenta it will make cysts and cysts and cysts and we call it is a molar degeneration, a mole degeneration. Molar degeneration.

And it needs absolutely to have on the first cell this DNA underline by methylation of the male way and the DNA methylated on the female, feminine way to be a human being.

Now we come to an extraordinary observation that the only cell in all my life in which those two methylation systems from father and from mother were present together inside one cell was in the ~~first~~ cell which gave me life.

Because progressively at each division this methylation is erased and replaced. And progressively cells learn by a cascade of reaction to specialize.

So that one will make nails, another will make the brain, another will make the liver and another will make the bones and another will make the muscle.

For example, I read only two months ago, that the male way of spelling is obligatory for muscles. And muscles are, we know, much stronger in males than in females.

But even in the female the information which build the muscles has to be underlined in the -- coming from father -- in the paternal way and remains that way so that muscles can be made.

And we are just beginning to understand that in fact this way of underlining the message which is different in father and in mother is the secrete that life is using, so that it can epitomize in one cell which a mathematician would say it is reduced at its simplest expression.

But everything it does, so that if you expand the polynomials like a mathematician will do, progressively, because everything was in the first formula but you have to express it progressively, cells will specialize and we will have this very curious bi-pedal form that we have.

Q Dr. LeJeune, as the being develops does it retain its individuality and its membership in the human species?

A Totally. We, each of has never been a chimpanzee. And we are not going to become one.

And the chimpanzee are the ones which has the

chromosomes closest to our own constitution is the reason I take that example.

No baby goes through different species. It belongs to its own species from the very beginning. And that's true to every species. It's not a special feature of humanity.

But what is written in the human fertilized egg that is in a human zygote, in the human being of one cell, what is written is this humanity.

Q Dr. LeJeune, at eight weeks how would you describe that being?

A I would describe that being indeed as a human being. But to tell the Court what it looks like, I would say it's Tom Thumb.

Q Tom Thumb?

A Tom Thumb. Because the human being at eight weeks is the size of my thumb.

That is from the head to the rump, he measure one inch. And if you were looking at one of them having never seen anything about human embryology, if I had an eight weeks human being in my fist you would not see I had anything inside.

But if I was opening my hand you would see a tiny human being with fingers, with toes, with a face and with the palm prints

you could read with a microscope.

You would see the sex. And this story of Tom Thumb, of the tiny human being smaller than the thumb which has always enchant the young babies and the great mothers, is not a fancy.

It is a truth. Each of us has been a Tom Thumb in the womb of the mother, in this curious shelter, in which only some red light, dim light comes in, in which there is very curious noise, one loud, and strong, and deep hammering which is the heart of the mother and which bangs around a decemberate (phonetic) of a counter bass.

And the other would be a very rapid, like the maracas. And it will come from the heart of this tiny human being.

And those two rhythms which we now can detect with hydrophones are typical of the most primitive music any human ear has every heard, which is the symphony of two hearts; the mother one like the counter bass, 60 times per minutes; and the baby one like the maracas like 150 per minute, 140 if it is a boy, 160 it is a girl.

Then this symphony of two hearts is what defines the true story of Tom Thumb. The poetry of our forerunner was based upon observation.

All the mothers knew that there was an underground shelter in which very tiny humans smaller than the thumb are living a quasi-miraculous life.

That's the reason why still now an old man like me can speak about Tom Thumb in a court without the people being laughing because they know it is a true story.

Q Dr. LeJeune, what is the effect of an abortion on an eight week human being?

A It kills a member of our species.

* * *

BERNARD NATHANSON, M.D., having been duly sworn according to law, testified as follows:

THE JUDGE: With respect to the speaking and movement in my courtroom, this is a court of law. It looks like someone's den with the fireplace, but it is a court of law.

I expect silence so we can hear the testimony, the direct examination and cross-examination.

All right, you may begin, counsel.

DIRECT EXAMINATION BY MR. TRAYNOR:

Q Doctor Nathanson, please state your full name and your address.

A Bernard N. Nathanson, M.D., 133 East 80th Street, New York City.

Q And, doctor, where are you licensed to practice medicine?

A In New York and Pennsylvania.

Q What is your educational background?

A I was educated at Cornell University. I then went to the McGill University Medical College in Montreal, Canada.

Q What degree did you receive from Cornell University?

A I did not receive a degree. It was pre-medical education.

I received a degree of M.D. at McGill in 1949.

Q And did you do any post-graduate medical training?

A Yes, I did. I had a year as a rotating intern at the Michael Reece Hospital in Chicago, a year as an assistant resident in surgery at the New York Hospital Cornell Medical Center, a year as assistant resident in urology at the New York Hospital Cornell Medical Center; four years of residency in obstetrics and gynecology at the Woman's Hospital in New York City.

That residency was interrupted by two years of service in the U.S. Air Force, during which time I was chief of obstetrics and gynecology in the Northeast Air Command.

And after this rather lengthy period of training and service, I entered the private practice of obstetrics and gynecology in New York City at the end of 1957, substantially older than I was when I started.

Q Doctor, what is your specialty?

A Obstetrics and gynecology.

Q Doctor, do you have a board certification.

A I do.

Q What is that?

A I was certified by the American Board of Obstetrics and

Gynecology in April 1960.

Q Do you have any hospital affiliations?

A I do.

Q And those are?

A I am senior attending obstetrician and gynecologist at the Saint Vincent's Hospital Center which is part of the New York Medical College.

I am senior obstetrician and gynecologist at the St. Luke's Roosevelt Hospital, which is part of Columbia University College of Physicians and Surgeons.

I'm associate attending obstetrician and gynecologist at the New York Hospital Cornell Medical Center.

And I was chief of the obstetrical service at the St. Lukes' Hospital for a period of five, four or five years, from 1973 until the end of 1977.

Q Do you have any professional associations?

A I do.

I am a member of the American Medical Associates, the New York State and County Medical Societies.

I am a fellow of the American College of Surgeons.

I am a fellow of the American College of Obstetricians and

Gynecologists; and a very lengthy list of really quite minor, other organizations.

Q Have you published any writings in your field?

A Yes, I have.

Q Could you give us some of these?

A I published, I believe, 15 or 16 scientific articles, several books, and assorted other material in the area of bio-ethics especially.

Q Have you published in the area of fetal development and embryology and fetology?

A Yes, I have, and I have also lectured on this in respect to my academic appointments.

Q Have you received any awards or honors in your field?

A Well, yes. I have been appointed assistant or clinical assistant professor of obstetrics and gynecology at the Cornell University Medical College which I currently hold.

I also hold a professorship at the New York Medical College where I am clinical associate professor of obstetrics and gynecology.

So I have professorships at two universities.

MR. TRAYNOR: I offer the doctor as expert witness in the field of obstetrics and gynecology.

THE JUDGE: Any objection.

MR. BANGIOLA: No objection.

THE JUDGE: All right, the doctor will be accepted as an expert in obstetrics and gynecology.

You may proceed.

BY MR. TRAYNOR:

Q Doctor, in addition to indicating your training in your chosen field, do you have any training in abortion procedures and any practice, any experience in that practice?

A Yes, I have -- and I say this immodestly, but I probably have more experience in the area of abortion and abortion technology than perhaps anyone in this country, owing to the fact that I was the director of the largest abortion clinic in the United States for a period of two years; and published early on in the medical literature, scientific papers on techniques of abortion, ambulatory abortion technology, complications of abortion, and a whole range of issues dealing with abortion and satellite issues.

Q Thank you, Doctor.

Doctor, would you describe the anatomy of the female

reproductive system?

A Yes. The anatomy proceeds from the vagina which is the lowermost point of the female reproductive system.

The uterus is the key organ. It is a pear-shaped organ which has at its lower end the cervix which resembles most closely, I suppose, a bottle neck.

The uterus itself is the pear-shaped part. It is really a hollow muscle which has a cavity within it.

Emanating from the horns of the uterus on either side are the fallopian tubes which are simply conduits for the egg.

And at the outer limits of the fallopian tubes on either side are the ovaries which are the organs which manufacture or produce the egg which is then subsequently popped out of the ovary, caught by the tube, and if fertilization is to take place it will take place in the tube itself, in the outer portion of the tube, which is called the ampulla.

Q All right, Doctor, what happens upon the occurrence of pregnancy in the human being?

A Well, I will not repeat Dr. LeJeune's very eloquent testimony.

I think you have all heard the conjunction of the sperm and

the egg detailed in rather beautiful detail.

But following the process of fertilization which occurs, as I say, in the ampulla of the tube, the fertilized egg begins to cleave or divide.

And it reaches, it cleaves into two cells and then four, and then eight, then sixteen.

When it reaches the sixteen-cell stage it is called a morula.

And it is at this point, roughly three days following fertilization that the egg proceeds into the uterus where it continues to divide and organize.

And by the sixth day, dividing and organizing, it is now in contact with the lining of the uterus, the endometrium.

Again, division continues. The egg forms now what is called a blastocyst.

That is the moruls now organizes itself into a cluster of cells at one end and a cavity at the other, which is called the blastocyst cavity.

And as it forms a blastocyst, it then comes into contact with the lining of the uterus.

As the organization of the human being continues, there is formed an inner cell mass within this blastocyst which is going to

be the future baby, or is actually the baby.

But it will be organized into a recognizable unborn baby; and an outer layer of cells which is called a trophoblast, which will form the placenta.

At about eight days following fertilization this blastocyst begins to burrow into the lining of the uterus.

And as it burrows, it begins to erode into the maternal blood vessels in the wall of the uterus, and begins to form a nexus with the mother, chemically, and in other ways.

But it is at this point when the circulations begin to interface, the circulations of the unborn baby and the mother, and chemical messengers now can go across that interface into the mother's circulation and vice versa, that we can first pick up the signals that the woman is pregnant, that there is, in fact, an unborn baby within the uterus.

Q At what point are we now in the pregnancy?

A This is about eight or nine days following fertilization.

We can begin to pick up what is called the beta sub unit HCG. I apologize for that.

That is the pregnancy hormone, the pregnancy chemical which we test for with pregnancy tests.

And it is at this point that we can confirm without question that there's a growing, living human being in the maternal uterus.

Q Can you describe the attachment to the uterus and the housing of the newborn human in the womb?

A Yeah, the trophoblast, this outer layer around the blastocyst and the inner cell mass, is an avaricious set of cells.

It goes scouting into the tissues of the uterus for blood vessels. And it has the power to open up maternal blood vessels.

And there is hemorrhage, small hemorrhage around the baby as a result.

From the blood which is surrounding the child now, the child begins to extract certain necessary chemicals, and nutrients, and even oxygen; having now exhausted its own stored-up oxygen and nutrients.

So at this point at eight or nine days, as I say, this nexus, this bridge is established between the unborn baby and the mother.

And the baby begins to extract the nutrients and oxygen from the mother at that point.

Q Is there anything that happens hormonally in the mother at the time of pregnancy, which changes her?

A Yes. Not only is the pregnancy hormone elaborated but through a complex series of interactions the pregnancy hormone acts back on the pituitary gland of the mother, the little gland which is situated at the base of the brain, to inhibit any further changes in the lining of the uterus which would normally develop as the menstrual cycle goes on, were the mother not pregnant.

That process is effectively paralyzed by the hormones which emanate from the fetus.

Similarly, there's an organ formed on the ovary of the pregnant woman called the corpus luteum of pregnancy which elaborates hormones designed to nourish the pregnancy, nourish the unborn baby, supply it with more nutrients and more oxygen.

Q Doctor, what are the stages of growth and development of this new human being in the womb?

A Well, we use words. But one should understand that this is really a seamless continuum.

We use the word zygote which you heard here, I think, from Dr. LeJeune, which is to connote the fertilized egg.

We use terms such as morula, the 16-cell --

Q Would you spell it, please?

A M-o-r-u-l-a. That connotes the 16-cell stage of the

developing human being.

We use the term called embryo which connotes the developing human being from the morulus stage up to about the end of the eighty week following fertilization.

Then we use the term fetus which takes us from the end of the eight week or beginning of the ninth week up to the time that the baby is delivered, whenever that it.

Q Do those words you used change the developing human being in any way?

A No, as I say they are really arbitrary semantic distinctions. But they do not represent anything substantive biologically.

I mean this is, as I say, a seamless continuum and if you insist on putting a label on this human being as it developed, but, well, you can put the labels on but it is really like calling someone a child or an infant or an adolescent or an adult.

I mean it is the same human being simply at a different stage in its development, that's all.

Q Doctor, would you describe the present arsenal of instruments or probes or tools so to speak, of your work, your profession, in treating or in examining and caring for these developing humans?

A Well, yeah, we have I guess starting about 1972 or '73, we began to develop a very sophisticated arsenal of instruments designed to study the development of the human being, in the uterus; and designed also ultimately to diagnose disorders and diseases of that human being; and ultimately to treat that human being.

Those modalities include such things as ultra sound examination. Now the ultra sound instrument is an instrument which has a quartz crystal at its business end.

And the quartz crystal vibrates at an enormously high rate, sending out sound waves at such frequency that we cannot hear them.

Even dogs cannot hear them. No ear can discern these sound waves.

As the sound waves proceed through the pregnant woman's body, or any tissues for that matter, they strike tissue interfaces, interfaces for example, between fluid and solid or between solid and bone, or various other structures.

But each structure in the human body, including the unborn, has a distinct kind of composition which will then yield distinct kind of echoes as that sound wave strikes the interface.

Now as the sound waves strike that interface, they are echoed back. And they are picked up in the same business head of this instrument by a sensor.

And the sensor will then translate these echoes or communicate the echoes back to a computer.

And the computer will recognize the echoes and then assemble the echoes in a certain pattern. And we can see from the pattern of the echoes the picture of the unborn baby.

Now this technology dates back to the 1950s. It is really not all that new.

But in 1976, there was a quantum leap forward in the technology with the establishment or development of what was called real time ultra sound; which, in fact, did not, no longer gave us a static picture of the echoes but allowed us to watch the echoes at play.

In other words, it was really like a motion picture. The echoes were being shown on a screen and changing from moment to moment.

And at this point we began to really hone in on exactly how the fetus or embryo or unborn baby at any stage of its development moves, functions, breathes, urinates, swallows,

everything.

We now had the means at hand to trace that unborn person from literally the very beginnings right through until a change of address called birth.

Now that technology -- by the way, it is now in color. We can now see the flowing of blood through the fetus, through the embryo, in red.

You can actually see the red on the screen as the vessels transmit blood through the fetal circulation.

That technology has allowed us now to proceed into areas which we never could proceed into before.

Q For example?

A Well, for example not only can we now trace the physiology, the normal functioning of this unborn patient, we can now diagnose its illnesses.

We can examine its anatomy. We can watch how it functions. We can actually watch the little valves in the heart as they flop up and down pushing blood through the heart.

And if one of the valves is abnormal you can see it on the ultra sound to correct it by the appropriate surgery.

We have come to the point where not only can we diagnose

the illnesses of this unborn patient from the very beginning, we can also treat it.

We can, for example, diagnose a goiter in this embryo, a swelling of the thyroid gland. And we can now inject thyroid hormone into the uterus and watch the baby swallow the thyroid hormone and cure its own goiter.

I guess the ultimate refinement of this particular technology has come with fetus surgery.

Fetal surgery is being carried out at selected centers across the country here, the most prominent of which is in California, in San Francisco, where Michael Harrison and his group are doing fetal surgery on a regular basis.

And they have published a book on their experiences. This is a medical text book called, "The Unborn Patient" which is written by Harrison, Colbus and Philly.

It was published first last year. A new edition is out. This book details fetal surgery. It is exclusively devoted to fetal surgery.

Q What is actually done in fetal surgery?

A Well, in fetal surgery, and this is done with the aid of ultra sound examination, which makes the diagnosis of the defect or

disease in the child.

The mother is put to sleep. The abdomen of the mother is opened surgically. Then the uterus is opened.

The amniotic fluid is sectioned out. The baby is pulled out of the uterus, the unborn baby still attached by the umbilical cord.

And the unborn baby's abdomen or chest or wherever the defect is, is incised surgically. Then the surgeon will repair whatever defect it is.

If it is a big defect in the diaphragm of the baby so that the intestines are coming up into the chest -- this is called a diaphragmatic hernia, which is a common reason to operate on these babies -- the surgeon will then either suture, sew up the defect or put in a piece of mesh which will bridge the gap in the defect, sew it into place.

Then, having completed the surgery, the incision in the baby is repaired, the baby is replaced into the uterus.

The fluid is then put around the baby and the uterus is sewn up. Then the mother's abdomen is sewn up, and she is allowed then to proceed in the pregnancy to at or near term.

Now it brings up a difficult question. Many people insist that the definition of a human being is when it is born. It is not a

person or human being until it is born.

Now this baby literally was born at this stage of four and five months, during the surgery. It was actually out of the abdomen, out of the mother's body.

So the question is when the baby is put back into the uterus and the uterus is sewn up and the mother goes on to deliver at nine months, is this a born again baby?

Q Doctor, what is fetology?

A Well, fetology is really just a whole science and a very flourishing science, of the development of the unborn baby, its diseases, disorders, surgery.

It has flowered enormously. In fact, it has proliferated beyond imagination in the last 20 years.

I recall that in 1972 I undertook to find out how many papers had been published in the world's literature on the fetus, and I think I counted about 100 at that time, on fetal physiology and anatomy.

Last year at the end of 1989 I went to the Cumulative Index Medicus which is an enormous volume which contains references to every single paper published in the medical literature in the world, in any language.

And I believe I counted some 4,000 articles on the fetus at that time.

(A brief recess was observed.)

BY MR. TRAYNOR:

A When I was in medical school, we used a text book called "Williams", which was in its eighth edition.

"Williams" is like a human being. It has multiple lives, just goes on and on. It's now in its 18th edition.

In that eighth edition which I used in medical school, there were about 30 pages devoted to fetal physiology, to the functioning and the anatomy of the fetus.

In the last edition, the 18th edition published in 1989, about 40 percent of the book is devoted to the fetus.

Of 700 pages about 300 pages are devoted solely to functioning and physiology of the fetus.

So you can see that this is a science which is blossoming and proliferating at an unprecedented rate.

Q What has fetology allowed us to do to study the development of fetology?

A Well, as I indicated we use ultra sound to a great extent. We also use electronic fetal heart monitoring.

This is an apparatus which is placed on the mother's abdomen, and it is a sensor designed to pick up the fetal heart rate moment by moment.

And it is tracked on a moving piece of paper. So it look really like a squiggle across a very long piece of paper or tape.

You can elicit definite reactions from a fetus as reflected in changes in the heart rate. For example, you can plays some Mozart.

I've tried "Eine Kleine Nacht Musik", which it seems to like very well.

MR. BANGIOLA: I stepped out of the room. I guess a missed a little bit. I thought we were taking a break.

THE JUDGE: Your mean the part about Mozart?

MR. BANGIOLA: I just cam back in the room.

THE JUDGE: You didn't miss anything. Basically it's the same question, we are still in the area of fetal surgery and I think the question that -- if you missed any question I'm sorry, Mr. Prosecutor.

MR. BANGIOLA: I stepped f rom the room, your Honor.

MR. TRAYNOR: Judge, I can just re-ask the question. There's only basically one question that I asked and --

THE JUDGE: Ask it again.

BY MR. TRAYNOR:

Q The question was, the development of fetology and what that entails and what it permits the doctor to do.

A I was indicating that we more or less exhausted the subject of ultra sound and we were now on another modality which we use by which we could investigate the fetus, which is electronic fetal heart monitoring.

And it basically tracks the fetal heart rate moment by moment. And as I said you can expose the fetus to a variety of stimuli, ranging from musical ones such as Mozart and you get a certain pattern of the fetal heart rate.

Than if you take Mozart off and you apply heavy metal like Van Halen you will get a jump from the fetal heart rate.

The baby will be let you know that it does or does not like heavy metal.

THE JUDGE: All right, ladies and gentlemen. I want to you refrain laughing all right.

This is not -- this is not -- a stage or play being conducted where at certain moments it is appropriate for the audience to respond to the actors on stage.

This is a court of law. Dr. Nathanson is testifying, and I would like him to be able to testify without any response from the court.

Continue.

BY MR. TRAYNOR:

A So we can elicit certain responses. Again, you can honk an automobile horn and this is frequently used in fetology in the investigation of the fetus, and get another reaction.

So we depend a lot on electronic fetal heart monitoring to refine for us the state of fetal health, and tell us exactly how the baby is doing.

The unborn baby is constantly asking us, really, how am I doing?

And we have to be able to respond to that question with the appropriate tests and investigations, particularly if we fell that the baby is in some way jeopardized.

And these are the two major elements or major modalities we use. We also have chemical tests, to do this, the physical tests I have described.

But mostly we rely on ultra sound and fetal heart monitoring to do our work for us.

Q Doctor, would you describe the functioning of an embryo at eight weeks?

A Yeah, at eight weeks, you have really a recognizable human being.

If you simply held it in your hand, as Dr. LeJeune pointed out earlier, and looked at it, it would be recognizably a person, a human being.

It has a brain which is now formed, although it will continue to develop. And, indeed the brains of little babies, born babies and even young children, continues to develop.

But the brain is there and it is developed and it probably, by the way, is beginning to elaborate a substance called Substance P, which is the chemical messenger for pain.

It has its arms and legs, and even the fingers and toes are now separate and distinct. It has an external ear. It has a nose.

It is, in fact, as I say, quite obviously one of us.

Q What is going on inside of its body in terms of its functions?

A Well, it is really just a miniature person or miniature human being. It is really functioning just the way we function.

It is now beginning to excrete some urine. The heart is

beating and has been beating for at least five weeks.

Circulation is going on. Brain waves have been isolated from eight week babies. The Japanese did this perhaps 30 years ago.

There's really nothing, nothing which we do that that baby doesn't do, except that we do it on a larger scale.

We are larger than life with respect to that baby. But the baby is doing everything as we do.

Q Doctor, is the pre-born baby separate from its mother?

A Yes, it is always a separate person. The circulations are separate. They never mix.

And if they do mix it can be lethal to the baby, or in fact to the mother, too. But, principally to the baby.

We know they are separate human beings from immunological studies.

By that I mean this: The baby is composed, remember, as Dr. LeJeune pointed out, repeatedly, of elements, genetic elements, from both mother and father.

Now it is housed temporarily as a kind of tenant in the mother's body. But it does have paternal genes and paternal

chromosomal substance.

So in effect, it is another person. It is not just the mother.

Now the white blood cells and the immune system of the mother's body or anybody's body, have the ability to recognize and distinguish self from non-self.

And that really is the reason why our white blood cells and our immune systems do not destroy our own kidneys or our own hearts or our own livers; because our white blood cells can recognize self from non-self.

And when there's a foreign substance put into one's body, the white blood cells will recognize it and immediately attack it in an attempt to throw it out, to get rid of it because it is foreign.

It's not self. Now when the pregnancy implants and makes a nexus with the mother's circulation so that chemical messengers are sent to the various systems of the mother, the white blood cells and, in fact, the entire immune system is galvanized because it recognizes that there's something in the mother's body, her body which is non-self.

It is foreign. It is this baby who is a foreign person to the mother.

And a concerted immune attack is focussed on this baby,

the intent being to expel the foreign intruder.

It is recognized, as I say, as non-self. However, over the eons obviously we have, we, meaning all of us who have been unborn babies at some point, we have erected a defense against this attack.

We have what is called the trophoblast, this layer of cells which constitutes our placenta, our after birth.

And that is really a w all, an immunological wall, behind which we can find sanctuary. It stops the attack. And for the most part all of us survive the attack.

Those who do not survive are expelled as spontaneous miscarriages. We call them spontaneous abortions.

Those are the people, the unborn babies who did not survive the attack, they are cast out as non-self, or foreign bodies.

But for the most part we do succeed in repelling this attack and that's the reason why we are all here today.

Q Doctor, it has been stipulated in this trial that an abortion occurred on a pre-born of eight weeks, an eight week embryo of one of the defendants in this trial on September 8, 1990.

Would you tell the Court what happened in the abortion, in

the induced abortion?

A Yes. I think that almost all of us, and I am including not only doctors but everyone, really didn't understand what an abortion did to a baby until in 1984 I set out to document precisely what happened.

And to that end, I commissioned a friend of mine who was working in an abortion clinic, to do his abortions that Saturday under ultra sound, continuous ultra sound observation, and to tape it.

So he did 25 or 30 abortions that day and taped them all, using real time ultra sound on the mother's abdomen.

He put the machinery on the mother's abdomen, had a screen in front of him, and proceeded to do these abortions. And he taped what happened.

Many of these tapes did not come out well. This is a difficult technology at eight weeks, twelve weeks, whatever it was.

But one tape did come out very well. And we subsequently incorporated that tape into a film called, "The Silent Scream."

Now the tape begins by showing the unborn baby moving around in the womb in the amniotic fluid. Any by the way, babies

being to move at eight weeks. That's the first time they start to move.

You can then see the doctor putting the instruments up into the womb to dilate the cervix, the neck of the womb.

And then in the same tape you can see the doctor braking the bag of waters and the water flowing out. And then you see the suction apparatus going up in the uterus.

And you see the baby moving away from the suction apparatus. And then the suction is turned on. This is a father tremendous negative force of suction, runs up to about 60 millimeters of mercury which is a very high suction.

And with that suction as you watch on the ultra sound tape you see the arms and the legs of the baby being torn off and then the body being ripped apart.

Now the head of this baby was too large to suction out. So the doctor had to take a metal instrument called a polyp forceps and reach into the uterus, find the head -- and you can see this really on the ultra sound tape -- put the forceps around the head, and then close the forceps.

So you can actually see the head being crushed on this ultra sound tape. Then the head was removed in pieces.

Now this was all documented on this tape and for the first time we had an accurate reproducible and reliable record of what actually happens during an early abortion.

Q Doctor, assuming that an abortion took place as stipulated in this case and an abortion took place.

What was the effect of that abortion on this baby?

A Well, the effect of the abortion clearly was a) to subject the baby to an unimaginable agony, and b) to end its life in the most barbaric and bloody manner possible.

* * *

BY MULLANEY:

Q Doctor, why did you name the movie "The Silent Scream."

A Well, in one frame of the film, the ultra sound film we could see the mouth of the unborn baby open. It was a dramatic moment, an arresting, in fact a heart stopping moment.

It appeared that the child was grimacing and almost appeared as if he or she wanted to scream. Now clearly you can't scream in the womb. There's no sound.

But it was a silent scream. It was a scream of the most unimaginable agony anyone can envision.

RUSSELL HITTINGER, Ph.D., having been duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. MULLANEY:

Q Can you spell that, Dr. Hittinger?

THE JUDGE: Have a seat, relax before you begin to spell you name.

All right, your full name?

THE WITNESS: Francis Russell Hittinger, last name spelled h-i-t-t-i-n-g-e-r.

BY MR. MULLANEY:

Q Dr. Hittinger, where do you live?

A I live at 21 Jefferson Road, Princeton, New Jersey.

Q Can you tell us a little bit about your education background?

A I received my undergraduate degree at the University of Notre Dame, and my master's and Ph.D. in philosophy from St. Louis University.

Q What was your undergraduate degree in?

A History.

Q What teaching experience do you have, Dr. Hittinger?

A I have been at Fordham University since 1987.

Q I'm sorry, where are you now?

A I am at -- well, I will get up to it. Usually I like to keep the chronology.

Starting at Fordham University in 1987 in the department of philosophy, I taught for one semester as a visiting professor in the department of Medieval and Renaissance studies at NYU.

And for the past two years I have been a visiting professor in the department of Politics at Princeton University.

Q Can you tell us anything about memberships you may have in various academic boards?

A Well, I belong to the two main philosophical associations in this country which are the American Philosophical Association and the American Catholic Philosophical Association.

In both of these I am simply a card carrying member. I am also on the editorial board of the American Journal of Jurisprudence.

Q Can you tell us a little bit about the American Journal of Jurisprudence?

A The American Journal of Jurisprudence is a journal of legal philosophy which is published at the University of Notre Dame.

Q Have you ever published any books specifically?

A I have published two books one of which is entitled, "Linking The Human Life Issues", which has to do with issues of the sort that we are considering today.

And a book on the University of Notre Dame Press entitled, "A critique Of The New Natural Law Theory."

Q Who is the publisher of the Critique -- I'm sorry. Who is the publisher other than the Notre Dame Press?

A The Linking Human Life Issues, Regnery - Gateway.

Q Have you had the opportunity to publish anything other than in book form?

A I have published several scholarly articles. I don't know what the count is exactly, but more than a dozen.

Q More than a dozen?

A Yes. On Oxford University Press, Wake Forest Law Review, Review of Metaphysics; things of this sort.

Q Have you any particular association with the abortion issue or related matters?

A Practically I have no connection to the abortion issue.

Q Okay, I meant professionally.

A Professionally, yes. My expertise in philosophy has to do

with moral philosophy, legal philosophy, political philosophy.

And I do teach this issue as a part of moral philosophy in the various schools that I have taught at.

Q Can you tell us a little bit, exactly what you do currently teach at Princeton?

A At Princeton I teach a course entitled the Politics of Civil Liberties, which is partly constitutional law, basic Bill of Rights, and philosophy of human rights.

MR. MULLANEY: At this point, your Honor, we'd like to ask the Court to recognize Dr. Hittinger as an expert in the field of philosophy.

THE JUDGE: Prosecutor?

MR. BANGIOLA: I do have some voir dire. But before that, Judge, I would like, I have a proffer as to what this witness has to say to the Court.

* * *

DIRECT EXAMINATION CONTINUED BY MR. MULLANEY:

Q Doctor Hittinger, since we seem to be groping for a definition here, what is philosophy?

A Generally speaking, it is a study of conditions for being able to make warranted assertions of truth about various areas: logic,

natural science, government, ethics.

There are different branches of it.

Q Were you present this morning for Dr. LeJeune's testimony?

A Yes, I was.

Q And were you present this morning for Dr. Nathanson's testimony?

A Yes, I was.

Q Did you have the opportunity to hear Dr. LeJeune testify that at all stages of development, the early human being is composed of matter?

A Yes.

Q Did you have the opportunity to hear him testify that it is specific as to its species?

A Yes.

Q And did you have the opportunity to hear him testify that within the species from the moment of conception is, in fact, individual?

A Yes.

Q Did you have an opportunity to hear Dr. Nathanson testify that this species specificity and individuality continues

throughout the course of development?

A Yes.

Q Dr. Hittinger, did you also hear both the doctors conclude that based upon empirical data and based upon the knowledge that the experts bring to this courtroom, that, in fact, what exists at conception and all points thereafter, is, in fact, a human being?

MR. BANGIOLA: Objection.

THE JUDGE: What is the objection?

MR. BANGIOLA: The objection is based upon the hypothetical as presented --

MR. MULLANEY: I'm just asking if he heard it.

THE JUDGE: He's just asking if he heard it. This expert can rely on testimony or the reports of other experts.

MR. BANGIOLA: If the question is limited.

MR. MULLANEY: My question is only did he hear.

THE JUDGE: I understand the questions are being asked as foundation for this doctor's opinions and philosophy.

MR. MULLANEY: That's correct.

THE JUDGE: Go ahead.

BY MR. MULLANEY:

Q Did you happen to hear those conclusions?

A Yes, I have.

Q Could you explain to the Court if and why that conclusion is philosophically correct or philosophically justifiable?

A So far as I know, there's no other way to establish an empirical fact other than the way Dr. LeJeune did so.

That is to say I don't believe that philosophy can be in the business, or any known school of philosophy, can get into the business of establishing the truth of falsehood of an empirical fact.

You obviously don't need a philosopher to come in here and tell you that there's a microphone sitting on the table.

Now definitions of what is human, indeed, definitions of anything, are incapable from a philosophical standpoint of establishing whether the object of that definition exists or not.

So, for instance, it is possible for me to conceive of the definition of something like a church dog, a bulldog that has the face of a Winston Churchill.

I can define what a church dog is and we can debate that definition endlessly.

But the fact of the matter is that no definition is sufficient in itself to establish a matter of empirical fact.

And, therefore, it would be my philosophical opinion that philosophers would have to begin with the facts testified to by Dr. LeJeune.

Q So to summarize is it a fair statement to say that because Drs. LeJeune and Nathanson were dealing with tex facts, that their conclusions are philosophically justified?

A Yes. To ascertain whether or not an entity is human or not, no definition will be sufficient. You're going to have to appeal to observable empirical data and the method of the hard science.

Q But philosophy itself does not offer a definition?

A Philosophy may be able to offer a definition, but offering definitions cannot establish any empirical fact about whether it is or isn't human.

Q Philosophy has to defer to the facts?

A Absolutely.

MR. MULLANEY: Your Honor, I have no more questions. Mr. Traynor will continue with direction examination.

THE WITNESS: Can I just say one more thing in connection with that?

THE JUDGE: What is that?

THE WITNESS: Just I would like to say this: Sure,

philosophy is a very abstract exercise.

But I believe this particular issue that is ascertaining whether or not in fact this is a human being, is not, in the first place, a question for philosophers.

And I believe I can assert that philosophically. I assert it philosophically because no definition can establish an empirical fact.

And, therefore, I think the first thing a philosopher needs to say is that he should get out of the away of that fact finder.

THE JUDGE: All right. Go ahead.

MR. TRAYNOR: Thank you.

DIRECT EXAMINATION BY MR. TRAYNOR:

Q Doctor, what is a person?

A A person is a human being.

Q What is your basis for saying that?

A Ordinarily, in the way we talk, we will tend to pick out under the concept of person, various high grade cognitive activities.

And I think it is fair to say that that is what we usually highlight when we use the term person, the ability to perform memorative functions, calculations, moral reasoning and so forth.

Now I am prepared to admit that there's a distinction to be drawn between certain corporeal or material conditions of the human being, and activities of the human being that are cognitive and so forth.

But distinctions between corporeal and mental activities, do not logically imply two different entities.

Q Give us an example.

A Right now I would assume that you both have a knuckle bone and that you are thinking. But there are not two Dick Traynors.

In other words, it is reasonable to distinguish between corporeal and cognitive functions.

But distinguishing between two things doesn't mean there's two different entities.

It would be a logical fallacy to suppose so. Therefore, there cannot be personhood unless there's first human being-ness.

And that our ability to distinguish certain traits of persons based upon cognitive activities from muscular structure, bones, and so forth, that distinction is always assuming that there is one being, and that one being is precisely the being that Dr. LeJeune testified to this morning.

And I would say the burden of proof as a philosopher, I would say the burden of proof is on the person who would want to contest that.

That is they would have to show that there are personal characteristics somehow not attached to bodies, and that when they draw the distinction between personal characteristics and bodily characteristics they are, in fact, talking about two different entities.

And the burden is on them to show that that is true.

Q Is there a name for that?

A The name for that is dualism.

Q What is dualism?

A Dualism is the position that you have two different and discontinuous entities. For instance, mind and body, soul and body.

You may be able to conceive of the situation from a dualist point of view as something like the relationship between a driver in his car.

So the car belongs to the driver all right, but is not the driver.

It is a very simple sort of way to picture what dualism

would be. So a dualist could argue that tex body is mine, but not me.

Now so far as I understand the debate from all the literature that I have read, at least at the level it is debated at an academic level, is that the material human being is like the car.

It is like a car without a driver. And until the driver shows up, that car can be disposed of without harming a person.

Q Is that what permits abortion in the minds of those who supports that dualism?

A I know of no serious scholar who writes in support of abortion who does not make that argument.

Q What is the, philosophically what is the -- what is the difficulty with dualism?

A The first problem is this: The dualist has no empirical way of showing when the driver shows up. It is a kind of spiritualism.

I mean it is as though some sort of ghost gets into the machine. Now you can entertain such a theory.

But I would venture to say there's no way to cite any evidence in support of it.

Dualism also leads to the problem of infanticide and I think this is widely recognized because the newly born infant is not yet

exercising high grade cognitive activities.

Now since we do generally believe that a newly born baby at least at live birth is a human person, by simple logic it would seem then that a position that wouldn't allow you to regard that as a human person is wrong.

Q Doctor --

A Contradicts what you are already doing and asserting about things.

Q Doctor, let me take you back into the time of the pre-born in the womb when the material presence which Dr. LeJeune talked about was present, as well as Dr. Nathanson.

Is there a time when something is added at a later time to that entity to then add personhood to it?

Is that a credible position?

A Well, I don't believe it is a scientifically or philosophically credible position.

Q Why not?

A You would then have to believe that the entity exists whole and complete in one respect and then from outside of the material world somehow or another a spirit somehow gets infused into it.

This is something that's beyond the range of any kind of

empirical observation, or, I mean this is something you could neither prove nor falsify, it seems to me.

That would be a matter of theology it would seem to me, perhaps.

Q Doctor, what is a potential person?

A The term potency comes from a Latin word, potencia, means power.

And there can be no such thing as a merely potential anything, all right. Because something has to have the power.

Often people confuse the terms possible and potential. Those terms are easily confused semantically in the way we speak.

But to give the term potential any kind of teeth or analytic bite so it means something, I think you have to say potential is power and something has to exist which has the power.

And so on one h and there is nothing wrong philosophically with saying someone is a potential human being.

But they can only be a potential human being, that is have the power to exercise the various traits associated with humanity, if they already are human.

Spermatozoa for instance may be possibly human. But spermatozoa cannot potentially be human.

Left just the way they are they will not ever be able to exercise traits of humanity.

So I would disagree with the coherence, the very coherence of the notion that someone can be merely potential.

Mere potentials can't exist. Something has to have the power.

So I suppose that John McEnroe from the moment of conception had the potencia or power to perform very high level athletic skills, but that being had to exist that has the potencia or the power to do so.

Q Doctor, with respect to human life in the womb, is that actual life or potential life?

A Well, that is actual life. Something has to actually exist to have the power, the potential.

BY MR. MULLANEY:

Q Dr. Hittinger, if you had to use one word to describe the phrase potential life, what would it be?

A It would be a natural being that has power to be exercised.

Q I mean the phrase potential life. What is potential life as a phrase? Is it a contradiction in terms?

A No. If we understand it to mean this: There's an actual life

that has the power to exercise those kinds of activities that are unique and appropriate to that species.

MR. MULLANEY: Thank you. Nothing further.

• • •

MUNICIPAL COURT

Morris County
Morristown, New Jersey

THE STATE OF NEW JERSEY

Plaintiff,

vs.

ALEX VERNON LOCE, et. al.

Defendant

Place: Morristown Municipal Court
110 South Street
Morristown, New Jersey

Date: April 29, 1991

Volume 2 of 2

B E F O R E:

HON. MICHAEL J. NOONAN, J.S.C.

* * *

Now there were certain stipulations that were entered into in this case. The defendants admit and acknowledge as true and

stipulate as finding of fact by the Court to all elements of the offense with the exception of the mens rea requirement as set forth in N.J.S. 2C:18-3(b) which I have already read.

In other words, the defendants stipulated to the fact, number one, that their identity, to their identity as being there on the premises and trespassing. Their presence on the subject premises through fort -- forceful entry as charged. There's a stipulation that they had been given notice adequately as required by statute. In other words notice that they were not supposed to trespass, they disregarded that notice according to the stipulation and forcibly entered the doctor's offices.

And all other proofs are stipulated that may be required by the State in establishing the charge, except mens rea.

So that it's clear, the State has the burden of proving each and every element of every offense beyond a reasonable doubt. The burden is on the State, it never shifts to the defendant. In this case it is stipulated all elements of this offense as I have read it here today, all elements are stipulated by the Defense, except the element of mens rea, or criminal intent. And so, therefore, the State had one element left that was not stipulated to.

The State acknowledges as true and stipulates as findings

of fact by the Court the following facts to be relied on by the defendants in establishing the affirmative defense as offered at trial.

One, and this of course was stipulated between the parties, that on September 8th, 1990 the date of the criminal trespass herein charged an identified young woman who was Mr. Loce's fiance was eight weeks pregnant. That is stipulated to. That Mr. Loce was the biological father of the fetus which was the object of the aforesaid pregnancy, and that on September 8th, 1990 the aforesaid pregnancy was terminated by an act of induced abortion by a medical doctor at the time and place charged by the State as being the time and place of the charged trespass.

That was stipulated to.

At trial Mr. Loce and the other defendants raised the following defenses. Use of force for the protection of other persons, N.J.S. 2C:3-5. Necessity and other justifications, N.J.S. 2C:3-2. Justification and property crimes, N.J.S. 2C:3-10. The right to defend life according to the New Jersey Constitution Article One Section One. And the right as a father to defend progeny, the Fourteenth Amendment U.S. Constitution.

This of course was Mr. Loce's individual offense.

Mr. Loce also raised the defense of use of force of persons with special responsibility, N.J.S. 2C:3-8 based upon his status of the father of the fetus about to be aborted.

Each defense was presented in the context that the fetus aborted at the facility on September 8th, 1990 was in fact a human being. The, the Defense then proffered the testimony of Dr. Jerome LeJeune, an M.D., a Ph.d., a geneticist from the University of Paris who discovered Down Syndrome and its cause. It was proffered by the Defense that Dr. LeJeune would offer expert testimony as to when individual life begins. This testimony was argued was relevant to the defense of all defendants on the issue of mens rea, and in establishing the eight week old fetus as a person pursuant to the statutory defenses previously mentioned herein.

Dr. Bernard Nathanson, expert in obstetrics and gynecology, and Dr. Russell Hittinger, an expert in philosophy where proffered as experts on the issue that the eight week old fetus was a person separate and apart from its mother.

I allowed their testimony. Few rights are more fundamental than that of an accused to present witnesses in his or her own defense, State versus Harold, 183 Super 485 Appellate Division

1982. This right extends to all relevant evidence. Relevant evidence is defined by evidence rule one, section two, N.J.S. 2A:84(a)-3 as evidence having any tendency in reason to prove any material fact.

On the issue of criminal intent, and on the issue of the meaning of what is a person in the context of this case, I allowed their testimony. And thus, the parties focused on the key issue in this case, when does individual life begin.

Dr. LeJeune testified first. He's a professor -- professor of fundamental genetics in the Children's Hospital in Paris. He's a pediatrician and a geneticist. He represented France in the United Nations Scientific Committee on the danger of atomic radiation. He established the first course in human genetics at the California Institute of Technology. He is credited with discovery of the first chromosomal abnormality in man, Down Syndrome. He was awarded the William Allen Memorial Medal in the United States for his work in genetics.

He was specifically asked the question when does human life begin. His answer was very interesting. He said he does not know, and he did not know when human life began, for human life is continuous and that is a question of evolutionary theory.

However, he did have an opinion as to when individual human life began. And he testified that individual human life begins at conception.

Dr. LeJeune explained that nature has invented an extraordinary device to protect the privacy of the very first stage of the human being. He said the right of privacy is written in the following way in biology.

The egg is surrounded by a permeable membrane called zona pellicuda. Once the sperm cell penetrates the egg this membrane becomes impermeable. According to the doctor's testimony this change in permeability occurs in a microsecond. Thus, all other sperm cells are prevented from entering the egg. At this moment the genetic material from the male sperm and the genetic material from the female egg are locked in together. No other genetic material can enter from that point on, according to the doctor's testimony. And all the genetic material is in place at that moment which Dr. LeJeune calls fecundation or conception. According to the doctor's opinion, this is the moment that individual human life begins.

This Court accepts Dr. LeJeune's opinion as true fact, and finds that the individual human life begins at conception.

Now Roe versus Wade concerned the constitutionality of Texas', the state of Texas' criminal abortion statute. The state of Texas argued that life begins at conception. Texas in, in Roe versus Wade, 410 U.S. 113 at page 159, 1973 decision, the Court noted at page 159 Texas urges that apart from the Fourteenth Amendment life begins through conception and is present throughout pregnancy, and that therefore, the state has a compelling interest in protecting that life from and after conception. The United States Supreme Court in Roe versus Wade in 1973 said at page 159, we need not resolve the difficult question of when life begins. When those trained in the respective discipline of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary at this point in the development of man's knowledge is not in a position to speculate as to the answer.

That was 1973. This is 1991.

Based upon the undisputed testimony of Dr. LeJeune, those trained in the respective discipline of medicine have arrived at a consensus in 1991, and that consensus is that individual human life begins at conception.

This Court, therefore, makes a finding of fact based upon

Dr. LeJeune's testimony that individual human life begins when the male sperm penetrates the female egg cell. All the genetic material a human being will ever need is locked in the egg at that moment according to Dr. LeJeune's testimony. He testified that there is no disagreement among biologists throughout the entire world that after fecundation no new genetic information enters the egg. At that moment a new individual, a new human constitution begins to live.

In this regard I would like to read Dr. LeJeune's response to two very important questions.

The two questions were, one, when does the individual human life or constitution begins, and two, what is a human being. His response is as follows.

The human constitution -- and this is at page sixty two of the transcript, line eighteen. The human constitution happens at the moment the genetic information coming from the father goes in the cell which is ready to have it, which is the female cell. And once the zona pellicuda has closed entirely, the information is locked in. No one can enter later. And all of it has to be there. To answer your question when does this special constitution begin, it's very simple. At the moment which is microseconds of

the change of the zona pellicuda which now is locking in the particular human constitution which is a new hu -- which is a new being. Now what is a human being? That's very simple. A human being has to be human, has to be a being. Then a human being is only a member of our species, and an egg of a chimpanzee can't be a hu,man being because it is a chimpanzee being. But every time that genetic information is human, every time this message which is at the beginning of life which is alive and which is life, as soon as this message is really a human message, then this life is a human life. And if it is a being, this being is a human being.

Dr. LeJeune also testified the new discoveries and genetic research have created a consensus among biologists and geneticists around the world that not, not only does individual human life begin at conception, but it can be identified as unique individual -- as a unique individual within its own species.

He explained that the Jeffrey D.N.A. identification system which was invented about four years ago allows this to happen. The D.N.A. ribbons which lace the ribbons of the male and female can be read like the bar code system in a super market. The Jeffrey system examines the D.N.A. ribbons within the

chromosomes and can identify and determine a unique D.N.A. code in every individual human being, much like a genetic fingerprint. This empirical data was not available in 1973 when Roe versus Wade was decided.

Additional new scientific and medical discovery since 1973 tested to -- testified to by Dr. Bernar -- Bernar -- Bernard Nathanson include fetal surgery, new ultrasound advances where the fetus can now be observed in an animated fashion within the womb, and some interesting data on the immunization system of the mother and, and its effect during pregnancy.

Again, these discoveries were not available in 1973.

Dr. Nathanson also testified on the fetus being separate and apart from the mother, thus supporting Dr. LeJeune's testimony that at conception two separate individual human beings harmoniously share their lives together. Dr. LeJeune used the human immunization system to prove that the mother and the fetus are two separate human beings.

Page 108 of the transcript, Dr. Nathanson, an expert in obstetrics and gynecology testified that -- well he was asked this question.

Doctor, is the preborn baby separate from his mother.

And his answer was as follows. Yes, it is always a separate person. The circulations are separate. They never mix. And if they do mix it can be lethal to the baby, or in fact to the mother too, but principally to the baby. We know they are separate human beings from immunological studies. By that mean this, the baby is composed as Dr. LeJeune pointed out repeatedly, of elements, genetic elements from both mother and father. Now it is housed separately as a kind of tenant in the mother's body, but it does have paternal genes and paternal chromosomal substance. So in effect it is another person. It is not just the mother. Now the white blood cells and the immune system of the mother's body, or anybody's body have the ability to recognize and distinguish self from non self. And that really is the reason why our white blood cells and out immune systems do not destroy out own kidneys or our own hearts or our own livers. Because our white blood cells can recognize self from non self. And when there is a foreign substance put into one's body, the white blood cells will recognize it and immediately attack it in an attempt to throw it out, to get rid of it because it is foreign. It's not self. Now when that pregnancy implants and makes a nexus with the mother's circulation so that chemical messengers are sent to the

various systems of the mother, the white blood cells, and in fact the entire immune system is galvanized because it recognizes that there is something in the mother's body, her body which is non self. It is foreign. It is this baby who is a foreign person to the mother. And a concerted immune attack is focused on this baby. The intent being to expel the foreign intruder. It is recognized, as I say, as non self. However, over the ions obviously we have, we meaning all of us who have been unborn babies at point, we have erected a defense against this attack. We have erected a defense against this attack. We have what is called the trofoblast (phonetic). This layer of cells which constitutes our placenta, our after birth. And that is really a wall, an immunological wall behind which we can find sanctuary. It stops the attack. And for the most part all of us survive the attack. Those who do not survive are expelled as spontaneous miscarriages. We call them spontaneous abortions. Those are the peep -- the unborn babies who did not survive the attack. They are cast out as non self or foreign bodies. But for the most part we do succeed in repelling this attack, and that's the reason we are all here today.

The person or human being sought to be saved in this case was an eight week old fetus. He referred to it as Tom Thumb

because it measures one inch from head to toes, approximately the size of your thumb. He described it as a tiny human being with fingers and toes, with a face, and with palm prints you could read with a microscope. When asked what effect an abortion would have on an eight week old fetus, Dr. LeJeune said it kills a member of our species.

. . .

I find based upon the undisputed medical and scientific testimony presented before this Court that the eight week old fetus in this case was a living person, a human being, and a unique and individual company of cells.

Roe versus Wade held that the right of personal privacy includes the abortion decision, but that this right to privacy of the mother was not unqualified and must be considered against important state interest in regulation, 410 U.S. at 154.

The United States Supreme Court in Roe also held that for the stage prior to approximately the end of the first trimester the abortion decision and its effectuate -- it's effectuation must be left to the medical judgment of the pregnant woman's attending physician, 410 U.S. at 164.

In this case it has been stipulated that the fetus was eight

weeks old, thus within the first trimester. Here the pregnant woman chose to abort. Her physician was attempting not grant her request to abort when the defendants forcibly entered and trespassed upon the physician's property in an attempt to prevent the abortion.

The prosecutor in his summation drew an analogy to a legal execution pursuant to the capital punishment statute. He said that if someone forcibly entered the jail and trespassed and tried to stop a legal execution of a convicted murderer, then this person would surely be guilty of trespass because the execution was legal according to the law, and thus there would be no justifiable reason under the law to prevent it from occurring, and this person would be guilty of trespassing.

I agree with the prosecutor. A person who trespassed to prevent a legal execution would be guilty of trespass notwithstanding the fact that their defense was to save the convicted murderer's life.

Roe versus Wade was decided eighteen years ago. They had the benefit -- had they had, had they had the benefit of all the scientific discovered over those past eighteen years their decision back then might have been different, but obviously they did not.

In 1973 they chose not to resolve the difficult question of when life begins. Their reasoning at that time was based upon the fact that there was no consensus in the medical and scientific community as to when individual human life began. But times have changed, and perhaps that question should be addressed by the United States Supreme Court today. However, Roe versus Wade is still the law of the land and this Court is bound by it, therefore, I find that the eight week old fetus in this case was a living human being that was legally executed pursuant to the United States Supreme Court's decision in Roe versus Wade, and therefore, there was no justifiable excuse to trespass in this case and attempt to prevent a legal active abortion. All the defendant's herein are held to know the law and are thus bound by it.

In this case all the elements of trespass have been stipulated to except mens rea or criminal intent. I find that the State has proven the element of mens rea beyond a reasonable doubt. The defendants knew exactly what they were doing and they are held to know the status of the prevailing law in this country.

In other words, whether they fully comprehended Roe versus Wade or not, they are bound by it. Their affirmative

defenses fall because the abortion they attempted to prevent was legal under the principle set down in Roe versus Wade. Therefore, for those reasons I find all the named defendants guilty of trespass pursuant to 2C:18-3(b).

Counsel, I'll hear you as to sentencing.

A-202

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MORRIS COUNTY
DOCKET NO. C-

Alex Loce,)

Plaintiff,)

v.)

)

Defendants.)

The Court determined that plaintiff who has filed no papers but having been represented upon which he seeks to enjoin defendant from voluntarily abortion a fetus in a medically acceptable manner, and having further determined that plaintiff and defendant are not married to each other and that plaintiff has merely alleged that he is the father to be, and the court having concluded that alleged prospective fatherhood is insufficient as a matter of law to support the relief sought and further that defendant who is of age has the exclusive right to decide to abort,

IT IS ON THIS 7th day of September 1990;

ORDERED that the complaint be and it is hereby dismissed.

/s/ K.C. Mackenzie
K.C. MACKENZIE, P.J.Ch.

APPELLATE DIVISION:
DOCKET NO.
MOTION NO.
BEFORE PART:
JUDGE (S): ANTELL
MICHELS
KIEFE

ALEX LOCE,

Plaintiff

v.

Defendant

Emergent Application Filed: 9/7/90 By: Plaintiff
Answer(s) filed: By:

Appearance Only: No appearance by Defendant, not having received notice.
Date Submitted to Court:
Date Argued:

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 7th day of September, 1990, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR	GRANTED	DENIED	OTHER
Injunctive Relief		x	

SUPPLEMENTAL:

Plaintiff's application for an order enjoining defendant from submitting to an abortion is denied. Judge McKenzie's order denying relief is therefore affirmed. Judge Keefe dissents from the within determination.

FOR THE COURT:

/s/ William P. Antell

Single Justice Relief denied 9-8-90.
Clifford, J., A.J.S.C.

A-204

SUPREME COURT OF NEW JERSEY
C-229 September Term 1993
37,199

STATE OF NEW JERSEY,	)	
Plaintiff-Respondent,	)	
v.	)	ON PETITION FOR
ALEXANDER LOCE, et al.,	)	CERTIFICATION
Defendants-Petitioners.	)	ENTERED OCTOBER 21, 1993

(AND OTHER RELATED MATTERS)

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-934/1233/1258-91 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the within appeal in this matter is dismissed pursuant to Rule 2:12-9.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 19th day of October, 1993.

ORDER entered October 21, 1993.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT